APPENDIX

TO THE

REPORT

ON THE

AFFAIRS

OF

THE EAST INDIA COMPANY.

V.

ON THE ESTABLISHMENT OF

Legislative Councils,—A New System of Courts of Justice,—and a Code of Laws,

IN BRITISH INDIA.

Ordered, by The House of Commons, *to be Printed,*
11 *October* 1831.

LIST.

COPIES of all CORRESPONDENCE, with Documents annexed thereto, which passed between the Governor General in Council and the Judges of the Supreme Court of Judicature, as well as between the Indian and Home Authorities, respecting the ESTABLISHMENT of LEGISLATIVE COUNCILS for BRITISH INDIA, a NEW SYSTEM of COURTS of JUSTICE, and the FORMATION of a CODE of LAWS, from the Year 1828 inclusive to the latest Period.

Page.

LETTER from Mr. Secretary Mackenzie to Mr. Secretary Auber (with Three Enclosures, Nos. 20, 21, 22); dated 20 October 1829 - - - - - - - - - - 1

No.

1.—LETTER by the Governor General in Council to the Judges of the Supreme Court of Judicature at Fort William; dated 14 July 1829 - - - - - - - - - 1

2.—LETTER from Board of Revenue, Lower Provinces, to the Governor General in Council at Fort William (with Two Enclosures); dated 24 January 1829 - - - - - 9

3.—LETTER from Board of Revenue, Lower Provinces, to the Governor General in Council at Fort William (with One Enclosure); dated 4 February 1829 - - - - - 9

4.—LETTER from Mr. Secretary Mackenzie to J. Pearson, Esq. Advocate General; dated 6 February 1829 - - - - - - - - - - - - - - 10

5.—LETTER from John Pearson, Esq. Advocate General, to Holt Mackenzie, Esq. Secretary to Government; dated 20 February 1829 - - - - - - - - - 10

6.—LETTER from E. Molony, Esq. to the Board of Revenue, Lower Provinces; dated 23 February 1829 - - - - - - - - - - - - - 11

7.—LETTER from Board of Revenue, Fort William, to W. B. Bayley. Esq. Vice President in Council, Fort William; dated 6 March 1829 - - - - - - - - - 12

8.—MINUTE by the Hon. Sir C. T. Metcalfe; dated 15 April 1829 - - - - - 13

9.—MINUTE by the Hon. Sir C. T. Metcalfe; dated 2 May 1829 - - - - - - 25

10.—NOTE by Mr. Holt Mackenzie; no date - - - - - - - - - - 27

11.—NOTE by Mr. W. H. Macnaghten; dated 9 April 1829 - - - - - - - 32

12.—NOTE by Mr. J. W. Hogg; dated 17 May 1829 - - - - - - - - 34

13.—NOTE by Mr. A. Ross; no date - - - - - - - - - - - 38

14.—LETTER from W. H. Macnaghten, Esq. Register Sudder Dewanny Adawlut, to Henry Shakespear, Esq. Secretary to Government, in the Judicial Department (with Enclosures); dated 5 June 1829 - - - - - - - - - - - - - 41

15.—COPIES of Opinions as to the Powers of the Mofussil Court to take cognizance of Civil Suits in which both Parties are Europeans; Mr. Minchin, Serjeant Bosanquet, Sir N. Tindal - - - - - - - - - - - - - - - 42

16.—LETTER from the Judges of the Supreme Court at Calcutta to the Board of Commissioners for the Management of the Affairs of India, Calcutta - - - - - - - - 44

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LIST—*continued.*

No. Page.

17.—CORRESPONDENCE with the Nizamut Adawlut and the Magistrate of the Suburbs of Calcutta, respecting Khoodabux, Saduttoolah and Challaroo; marked (A. B. C. D.) - 49

(A.)—LETTER from H. Shakespear, Esq. Secretary to Government, to W. H. Macnaghten, Esq. Register of the Nizamut Adawlut; dated 16 June 1829 - - - 49

(B.)—LETTER from W. H. Macnaghten, Esq. Register of the Nizamut Adawlut, to Henry Shakespear, Esq. Secretary to Government in the Judicial Department - - 50

LETTER from R. Brown, Esq. to W. H. Macnaghten, Esq.; dated 2 July 1828 - - 50

(C.)—LETTER from H. Shakespear, Esq. Secretary to Government, to the Acting Magistrate of the Suburbs of Calcutta; dated 7 July 1829 - - - - - 51

(D.)—LETTER from J. Thomason, Esq. to Henry Shakespear, Esq.; dated 13 July 1829 51

18.—MEMORANDUM on the Recorder's Court at Singapore, Malacca, and Prince of Wales Island, by Mr. R. Fullerton; dated 8 May 1829 - - - - - - - - 52

19.—LETTER from the Judges of the Supreme Court at Calcutta to the Governor General in Council; dated 2 October 1829 - - - - - - - - - - - 53

20.—MINUTE by the Hon. Sir Charles E. Grey, Knight; dated 2 October 1829 - - 54

21.—MINUTE by the Hon. Sir J. Franks; dated 23 September 1829 - - - - - 78

22.—MINUTE by the Hon. Sir E. Ryan; dated 2 October 1829 - - - - - 88

23.—MINUTE by Lord W. C. Bentinck, Governor General; dated 10 October 1829 - - 100

24.—LETTER from the Governor General in Council to the Judges of the Supreme Court of Judicature at Fort William; dated 20 October 1829 - - - - - - 102

25.—LETTER from the Governor General in Council to the Court of Directors, &c. &c.; dated 14 October 1830 - - - - - - - - - - - - - 104

26.—LETTER from the Judges of the Supreme Court to the Governor General in Council, submitting the following Papers relative to the institution of Legislative Councils, the formation of a Code, and the establishment of a System of Courts; dated 13 Sept. 1830 105

HEADS of a Bill, to be intituled, "An Act for establishing Legislative Councils in the East Indies" (Enclosure, No. 1) - - - - - - - - - - - 107

OBSERVATIONS on a Suggestion by the Governor General in Council, relative to the formation of a Code of Law for the British Territories in the East Indies (Enclosure, No. 2) 111

OUTLINE of a System of Courts for the British Territories in the East Indies (Enclosure, No. 3) - - - - - - - - - - - - - - - 114

OBSERVATIONS on various Questions touching the Origin and Nature of the Authority possessed by the Government and the Jurisdiction of the Supreme Court of Judicature; with Suggestions for the better Administration of Justice, and the adjustment of the numerous points now involved in doubts and difficulties (Enclosure, No. 4) - - 117

27.—LETTER from Governor General in Council to the Judges of the Supreme Court, suggesting for their consideration certain Alterations and Additions in the Bill to be entitled, "An Act for establishing Legislative Councils in the East Indies;" dated 28 September 1830 - - - - - - - - - - - - - - - 141

28.—LETTER from Governor General in Council to the Judges of the Supreme Court, communicating the sentiments of his Lordship in Council, on the Papers submitted by them relative to the formation of a Code of Laws and the establishment of a System of Courts for the British Territories in the East Indies; dated 9 October 1830 - - - - 143

LIST—*continued.*

No. Page.

29.—LETTER from the Judges of the Supreme Court to the Governor General in Council, in reply to Letter of the 28th September; stating their sentiments on the Additions and Alterations proposed in the Bill; dated 7 October 1830 - - - - - - - 150

30.—LETTER from the Governor General in Council to the Judges of the Supreme Court; explaining more clearly the views of his Lordship in Council, in suggesting an Alteration commented upon in the above Letter; dated 11 October 1830 - - - 151

31.—LETTER from the Judges of the Supreme Court to the Governor General in Council; returning Amended Minutes of a Bill for establishing Legislative Councils in the East Indies; dated 13 October 1830 - - - - - - - - - - - - - 152

HEADS of a BILL, to be intituled, " An Act for establishing Legislative Councils in the East Indies" - - - - - - - - - - - - - - 153

32.—LETTER from J. Thomason, Esq. Officiating Deputy Secretary to Government, to P. Auber, Esq. Secretary to the Court of Directors, transmitting further Communication received from the Judges of the Supreme Court of Judicature at Fort William, in Bengal, with its Enclosure; dated 28 December 1830 - - - - - - - - 159

33.—LETTER from the Judges of the Supreme Court to the Vice President in Council; forwarding with their sentiments, Copy of a Letter addressed by them to the Secretary of the India Board, relative to the existing System of Law and Government in India, and the Changes contemplated by the institution of a Legislative Council; dated 16 December 1830 - - - - - - - - - - - - - - 159

34.—LETTER from the Judges of the Supreme Court to the Secretary of the Board of Commissioners for the Affairs of India, relative to the existing System of Law and Government in India; dated 16 October 1830 (Enclosure in the above) - - - - 162

INDEX - - - - - - - - - - - - - - - - - - 189

APPENDIX

TO

Report on the Affairs of The East India Company.

V.

ON THE ESTABLISHMENT OF

Legislative Councils,—A New System of Courts of Justice,—and a Code of Laws,

IN BRITISH INDIA.

(Territorial Department, Revenue.)

LETTER from *Holt Mackenzie*, Esq., to *P. Auber*, Esq., &c. &c. &c.

SIR, Fort William, 20th October 1829.

WITH reference to my Letter of the 1st September last, I am directed by the Governor General in Council to transmit to you, for the purpose of being laid before the Honourable the Court of Directors, copies of the several Papers specified in the annexed List, of which the subject will hereafter be again brought to the notice of the Court in a separate Despatch.

I have the honour to be, Sir,
Your most obedient Servant,
(signed) *Holt Mackenzie*,
Secretary to Government.

—No. 1.—

LETTER from Lord *W. C. Bentinck*, Governor General in Council, to the Honourable Sir *Charles E. Grey*, Knight, Sir *John Franks*, Knight, and Sir *Edward Ryan*, Knight, Judges of the Supreme Court of Judicature at *Fort William*.

HONOURABLE SIRS, Fort William, 14 July 1829.

IN pursuance of the intention stated in the concluding paragraph of our Letter of the 13th instant, we have now the honour of communicating to you the views and sentiments which we entertain in regard to the measures to be pursued for the adjustment, among others, of the important question discussed in the Despatch addressed by you to the Secretary to the Board of Commissioners for the Affairs of India.

{ In the General Department, Consultation, 13th June 1827, No. 5.

2. Previously to the receipt of that Letter, the defective state of the Law relating to the jurisdiction of the King's Court, and to the powers of the Government and of the Tribunals established by its authority in the interior of the country, had for some time occupied our attention.

3. In regard to almost every provision of the British Parliament, whether for defining the legislative authority of the Governments of the several Presidencies, or for prescribing the course to be pursued by them in the executive administration, questions have arisen of a very embarrassing nature. The rules applicable to the Sudder Dewanny and Nizamut Adawlut, and to the subordinate Native Courts,

V. Legislative Councils; Courts of Justice; Code of Laws.

which rest on parliamentary enactments, though few in number, have given rise to many doubts and difficulties. Those relating to the rights and obligations of individuals are not more free from obscurity.

4. On several important points the question of the jurisdiction of His Majesty's Courts appears to be involved in doubts, productive of alarm to our native subjects, of embarrassment to the local Governments, and discredit to our country. In some instances it seems to us that those Courts have been compelled, by a construction of the law contrary to the probable intention of the Legislature, to extend their jurisdiction in a degree inconsistent with the public convenience; and we cannot but perceive that a delay which must attend a reference to England, for the purpose of removing such doubts, or of reconciling the obligations of the law to the exigencies of State expediency, might be attended with the most afflicting consequences. In cases, moreover, in which the co-operation of the King's Court is requisite to the validity of the laws and ordinances of the local Governments, there exist no means, short of an application to Parliament, of insuring consistency of proceeding at the several Presidencies, however essential to the public interests. The legislative powers vested in the several Governments, in their application to British born subjects, and to persons of all nations and persuasions residing within the cities of Calcutta, Madras and Bombay, (some of whom have no recognized law of marriage or inheritance,) appear to fall in several respects short of what the exigency of the case demands; and the present system, under which rules and ordinances applicable to those cities are passed, seems to be open to many and serious objections.

5. The good fortune which this Presidency has enjoyed does not materially lessen our sense of the evil, since it is obvious that the mischief of an inapplicable law can never be cured by the wisdom and moderation of Judges bound to obey it. We can only therefore derive from the circumstance the gratifying assurance, that in soliciting your aid and advice, our representation will be met with a cordial desire to concur in every measure that may appear calculated to promote the interests of our country.

6. While we are strongly impressed with the defectiveness of the existing law, as applicable to the state of things for which it was designed to provide, we see abundant reason to conclude, that the changes which have recently occurred, and those which may soon be anticipated, are likely to render its imperfections still more glaring.

7. The new Insolvent Act must apparently give rise to many cases very inadequately provided for. Some parts of the law for the improved administration of criminal justice, appear to contemplate the existence of institutions not known to the country; and if increased facility be given to Europeans to settle in the interior, and to acquire landed property, a measure which we deem essential to the best interests of England and of India, it is clear that many and serious inconveniences must be experienced, unless they be liable, with the rest of the inhabitants, to the authority of the local Courts.

8. In deliberating on the means of correcting past omissions, and of providing for the exigencies of the future, we are forcibly struck with the apparently insurmountable obstacles that present themselves to the attempt of accomplishing those objects by a parliamentary enactment for the several cases. To hope that all the points which will arise can be anticipated by any scheme of prospective legislation, would be visionary. To expect that the matters which have actually presented themselves can be provided for by Parliament, without giving occasion to many new and intricate questions, would be to overlook the result of all past experience. It will be equally at variance with all the conclusions which we should draw from general reasoning. Even in legislating relative to things most familiar, with all the advantages of full discussion by the parties interested, and all the information acquired by the daily business of life, it is seldom that the consequences of a law are fully anticipated.

9. With such impressions, we cannot resist the conclusion, that it is a matter of the most urgent expediency to have in this country an authority legally competent to legislate for all classes and all places, subject to the political authority of the Honourable East India Company; and this persuasion, the facts and observations stated by you in the Despatch to which we have already referred, are calculated powerfully to confirm. Now, in the present circumstances of the country, there

there seem to be no elements for a Legislature, excepting the Government and His Majesty's Courts; and it seems to us that the concurrence of both is for a variety of reasons highly desirable. In other words, we should propose, that the Members of the Supreme Government and the Judges of the Supreme Court of Calcutta should be constituted a Legislative Council, with power to enact laws for the guidance of all Courts, whether established by The King or by the local Government, within the territories of the East India Company, and for the regulation of the rights and obligations of all persons subject to their authority.

10. By these means we should hope that the defects of the law, as now existing, might be speedily and safely corrected, without imposing upon any burthensome additional labour, or requiring from you any duty inconsistent with the most complete independence in your judicial capacity.

11. We should anticipate very great benefit from a change by which the Judges of your Court would be constitutionally empowered and authorized to afford us the full benefit of your experience and legal knowledge, and by which they would, equally with the Members of the Government, have a voice in regard to the expediency of all proposed laws, instead of being confined, as now, to a decision on the question of their repugnance or otherwise to English law, after the Government has committed itself by their enactment.

12. The registry and publication of such laws in the Supreme Court, with the same right of appeal to The King in Council, might be made, as now, in the case of rules and regulations for the good order and civil government of the Presidency; the Judges of the Court having, however, as such, administrative functions only. Any argument against a proposed law (supposing parties to appear and oppose it) to be heard, if heard at all, before the Supreme Council, constituted as above, from which the appeal to His Majesty in Council should lie.

13. Coming to the above conclusion, as to the general measure to be adopted for remedying the defects of the existing system, it does not appear to be necessary for us to enter into any detailed explanation of the circumstances under which those defects have practically developed themselves, or of the specific rules and regulations by which we should propose to apply a remedy. It may not, however, be irrelevant to state, that we are informed that the persons whose case has been submitted by you to His Majesty's Government had, previously to their being put upon their trial in the Supreme Court, been tried by the Court of Circuit, three of whom were acquitted by the Judge of that Court for want of proof, and one was ordered to be discharged by the Nizamut Adawlut, on a reference from him, on a failure in jurisdiction, in consequence of the stolen property having been found in the prisoner's possession within the limits of the town of Calcutta. It may also be proper to take this opportunity of remarking, that the criminal law, as administered by the Nizamut Adawlut and the subordinate Courts in the interior of the country, retains but little of the Mahommedan Code, whether in respect to the laws of evidence, or to the punishments annexed to offences; and that we most anxiously desire to adopt all practicable improvements in the constitution and forms of those Courts, so as to obviate every reasonable objection against the extension of their jurisdiction to all cases which can be expediently subjected to that of your Court.

14. The immediate object, however, of the present Address is to solicit a communication of your opinion on the general question. And should your sentiments concur with those we entertain, as to the expediency and necessity of enlarging the legislative powers of Government, we shall be much obliged to you if you will further state the conclusions to which a consideration of the subject may lead you, in regard to the mode in which such powers could best be exercised, and the limitations to which the exercise of them should be subjected.

15. We have directed our Judicial Secretary to furnish you with all the Papers which we have had immediately under consideration on the present occasion, and with any others to which you may desire to refer.

We have, &c.

(signed) *W. C. Bentinck.*
W. B. Bayley.
C. T. Metcalfe.

(Miscellaneous.) — No. 2. —

V. Legislative Councils; Courts of Justice; Code of Laws.

LETTER from Board of Revenue, Lower Provinces, to Lord *W. C. Bentinck*, Governor General in Council, &c. &c. &c., *Fort William.*—(With Two Enclosures.)

Board of Revenue, Lower Provinces,
24 January 1829.

MY LORD,

WE have the honour to submit, for the orders of your Lordship in Council, the accompanying Letter, addressed to our Secretary by the Receiver of the Supreme Court, with its Enclosure, described to be an authenticated copy of a Decree of the Supreme Court in the suit mentioned in the margin.

Woomeschunder Paul Chowdry, and another, *versus* Premchunder Paul Chowdry, &c.

2. The Letter from the Receiver of the Supreme Court contains an application that instructions may be issued by the Board to the Local Collectors, for registering on their respective Records, as joint proprietors of the several lands adjudged to them, the names of the parties to whom those lands have been decreed.

3. We are not aware of any precedent for this application to us, and we are of opinion that decrees of this description by the Supreme Court should be carried into effect through the Mofussil Courts, to which the necessary application for the purpose should be made.

4. A mutation of names cannot, however, be legally entered in the Malgoozar Registers before possession has been obtained in the constituted manner; and we conclude, of course, that no decree of the Supreme Court can affect the liability of the entire estate for arrears of public Revenue until a separation and allotment of Jumma shall have been made, on the application of the parties, in conformity with the provisions of the Regulation XIX., 1814; and if it shall be deemed expedient that orders be issued to the Collectors by this Board, we would propose to instruct those officers to enter the names of the parties as joint proprietors.

5. The orders of Government are more particularly solicited on the present occasion, inasmuch as we observe the Supreme Court has appointed one of its European officers to administer the collections and receive the rents of the six Annas share allotted to Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, of the lands and premises detailed in the Decree; thereby superseding, as we conceive, the jurisdiction of the Court of Wards in regard to the infant defendant, Gunganarain Paul Chowdry, should the estate of the said minor become subject to the jurisdiction of that Court; but in regard to the circumstances of which estate our Records do not at present afford us the means of information; and involving likewise a possible collision of authority between the Revenue Officers and the said Receiver and Manager, in case the landed property should at a future period come under attachment by orders of the Courts of Justice, as provided for by Regulation V. of 1827.

6. Until we shall be favoured with the receipt of the orders of your Lordship in Council, we shall postpone any communication in reply to the application from the Receiver of the Supreme Court.

We have, &c.
(signed) *J. Pattle.*
W. Blunt.

(Enclosure in No. 2.)

LETTER from *E. Macnaghten*, Esq., to *G. A. Bushby*, Esq., &c. &c. &c.

Receiver's Office, Court House, Calcutta,
23 January 1829.

SIR,

I HAVE the honour to transmit herewith an authenticated copy of a Decree of the Supreme Court of Judicature, passed on the 16th of September last, in the suit of Woomeschunder Paul Chowdry and another against Premchunder Paul Chowdry, &c.; and to beg that you will lay the same before the Board, with my request that instructions may be issued to the Collectors of the districts of Nadia, Jefsore, and the twenty-four Pergunnahs, for registering in their respective Records the names of Woomeschunder Paul Chowdry and Woojulmoner Dossee, the widow and repre-

tive

sentative of Ruttenchunder Paul Chowdry, as joint proprietors of the several lands adjudged to them by the said Decree, with a view to its provisions being duly carried into effect.

You will have the goodness to observe, that by the said Decree James Weer Hogg, esquire, is appointed the Receiver of the six Annas share allotted jointly to the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, and that the duties of Receiver have lately been transferred to me. I have, &c.

(signed) *E. Macnaghten,*
Receiver, Supreme Court.

(Copy.)

In the SUPREME COURT of JUDICATURE at *Fort William* in *Bengal.*

In Equity.

THE Honourable Sir *Charles Edward Grey*, Knight, Chief Justice;
The Honourable *Edward Ryan*, Knight, Justice.

Tuesday the 16th of September, in the ninth year of the reign of His Majesty King GEORGE the Fourth, and in the year of our Lord 1828. Between Woomeschunder Paul Chowdry and Ruttenchunder Paul Chowdry, by Sree Multy Dossee, his mother and next friend, Complainant; and Premchunder Paul Chowdry, Isserchunder Paul Chowdry, Juggulkishore Bundapadho, and Ramsoonder Goopto, Defendants; by Original Bill: And between Woomeschunder Paul Chowdry and Ruttenchunder Paul Chowdry, an infant of Sree Multy Dossee, his mother and next friend, Complainants; and Isserchunder Paul Chowdry. Juggulkishore Bundapadho and Ramsoonder Goopto, and Joynorain Paul Chowdry, and Gunganorain Paul Chowdry, sons, heirs and legal personal representatives of Premchunder Paul Chowdry, deceased, Defendants; by Bill of Revivor: And between Woomeschunder Paul Chowdry and Ruttenchunder Paul Chowdry of Woomeschunder Paul Chowdry, his brother and next friend, Complainants; and Isserchunder Paul Chowdry, Joynorain Paul Chowdry, and Gunganorain Paul Chowdry, Juggulkishore Bundopadho, and Ramsoonder Goopto, Defendants; by Supplemental Bill: And between Woomeschunder Paul Chowdry, Complainant; and Isserchunder Paul Chowdry, Joynorain Paul Chowdry, Gunganorain Paul Chowdry, Sree Multy Dossee, Defendants; by further Supplemental Bill: And between Woojulmoney Dossee, Complainant; and Woomeschunder Paul Chowdry, Isserchunder Paul Chowdry, Joynorain Paul Chowdry, Gunganorain Paul Chowdry, and Sree Multy Dossee, Defendants; by Bill of Revivor.

This Court doth think fit to order, adjudge and decree, and doth accordingly order and decree, that the partition and division of the several zemindaries, pergunnahs, dhees, villages, lands, messuages, houses, hereditaments and premises so made by the said returns and schedules to the said two several Commissions of Partition issued respectively on the said 31st day of July 1824, and on the 7th day of June 1827, be firm and effectual for ever, and be carried into effect: And it is further ordered, adjudged and decreed, that the said Isserchunder Paul Chowdry, and the heirs and representatives of the said Premchunder Paul Chowdry, deceased, do and shall hold and enjoy jointly, as members of a joint individual Hindoo family, and for their ten sixteenth parts or shares of the said lands and premises, the several lands and premises following; that is to say, No. 1, the Pergunnahs Allumpore, in the district of Nuddea, and province of Bengal, including Goomdpire, comprising and consisting of sixty villages, and not sixty-four villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned, and the lands and grounds appertaining and belonging thereto. No. 3, the Pergunnah Paujnoir, in the district of Nuddea, and province of Bengal, as by title-deeds, comprising and consisting of thirty-six villages, and not thirty-eight villages, as in the said Commission described, and the lands and grounds appertaining and belonging thereto. Of No. 4, the Dhee Unmendpore, and others, in the Chucka Sreenuggur, in the district of Nuddea, and province of Bengal, comprising and consisting of eighty-three, and not eighty-two, villages, as in the said Commission mentioned; the fifty-eight villages following; that is to say, Nijsanpore, Ramsunkupore Rajahpore Chungrah in Tamf Tooroonepore Itchlampore Bhohrloh Lalook Rogoonathpore, Khur Rajahpore Tulcomie Mamoodpore Nij Bhunder Colloh Palloh Kor Kulluh by Manoodpore, Konockpore Hoodugoraby Satasey Rostoomegore Dat Bhanga Chouzatcha

V. Legislative Councils; Courts of Justice; Code of Laws.

zatcha Nij Champah, including Nobyekha Siemoolah Rammessore Pore Bangadunga, Nundou Kooly Nij Camdahpore Chattenah Nij Darupore Bolorampore, Hoodun Bolampore Bangalpore Nij Seroppore Russillohpore Gooroomary Dawooly, Nij Mothorgah Cheygoyroh Nij Chowgatcher Sibpore Hoodamampore Henguaiah Mahaschandrapore Cheerely Poorooneah Bolubpore Nuckhunpore Boltoh Jaotoh Dhurmopore Coondoleah Rotchulpore and Takver Pautchpollah Nij Baughlancy Soerjun Maudpore Maneckloll Mutterpore Chiltalah Bullubpore Rockcholpore Bookvor Pautchpotah, and the lands and grounds appertaining and belonging thereto. No. 5, the Pergunnah of Ameerabad, in the same district and province, comprising and consisting of four villages, and the lands and grounds appertaining and belonging thereto. No. 6, the village and lands of Dacrepore and Mungenkollah, in the same district and province, comprising and consisting of two villages, and the lands and grounds belonging and appertaining. Of No. 10, the Chucklah Dooleapore and Dhee Kissenpore, in the same district and province, consisting and comprising 149 villages, and not 189 villages, as in the said Commission mentioned; the ninety-three villages following; that is to say, Nij Malangoh Battpooley, Tughurry Mundogram Kautchroh Hanty, Bremmo Lanson Lawbealy including Jungul and Puttit Kultuosserepore Chuck Isslampore Bouna Daugah Okroh Cooraly, Shery Charol Goryroh Kholly Kottyham Howl Itcha Coor including Pantonea Pookereah and Jungul and Puttit Hanapore Chouheetah Gholah Doyepam Hansure Couty Khojah Bauah Gooah Baniah Chardiah Bossontpore, including Gonapoty, Nij Soonamoojory Daboueah Gunge Cottah Mondo Cottah Bannatpire Cottee Pautkoley Sibpore Saikunderpore Jodo Danodopore Soder Cottee Dumralez Sair Cottee Rounadipore Cottee Sobono Gutcha Parooss Chuck Coman Cottee Ramaissorepore, Ragoorampore Horicompore Minojcottee Gonassepoore, Mohowkholly Joyohtollah Nursingkholly Antoporee Bholson Cottee Maheesey Mottee Tulloh Bistnopore Morah Gotcha Noyee Hottee, Chingrah Alleepore Joynagoo Nij Autsotah Porroh Bejercotee Godhooleeah, Goyoroh Coley Kessore Hossampore Khoromey, Ansey Coor Sibpore, Chuck Sibpore Roghoosum Pooree Bajoodh, Goree Mondhoo Cottee Mastohapore Peraujpore Joychundee Tulloh Camer Gorah Toher Bang Tolley Kholley Hamodoho, Ramgohindpore Choleattah Ghollah Chomarding Bickorlonpore Toongupore Boogdoll, Gopaulpore Ramchunderpore, Baneeah Dabeypore Cootabpore, Bargachee and Bublohpore, and the lands and grounds appertaining and belonging thereto. Of No, 11, the Dhee Bajuspore, in the Pergunnah of Datceea and district of Jefsore, in the same province, consisting and comprising eighty-six and a half villages, and not eighty-four villages, as in the said Commission mentioned; the fifty villages following; that is to say, Nij Cahilpore Pootreeah Kholly Kismut Soorooteah Chondepore Bacpempore Aaleypore Dabesorah Ekrampore Daleepore Indrougai Choopnagore, Mooradabad Luckhunnagore Mogoorah Ghonoh, Nij Lingoh Khaloorah Maudpore, Syley Had, Hooleah Denbaka, Bore Barnery Modenpore, Rajahpore Ghesloh, Pookooreah Kismut, Saricoodho Kismut, Sunoomeah Buckseyonpore, Koomareah Banttroh Noyacollee Bucksay, Zooroppore Kismut, Chain Kollah, Goal Chattee, Rajindropore Kismut Koomareeot Nij Rajah Bagilpore, Rajah Cottee Mohadebpore Monumpore, Cham Kollah Kismut Chettreloh, Goal Barreah, Jamlah Gourangpore Knolloy Mauleba, and the lands and grounds appertaining and belonging thereto. No. 12, the Dhee Dandpore, in the Pergunnah of Satoor, in the same district and province, consisting and comprising 163 villages, and the lands and grounds appertaining and belonging thereto. No. 13, a moiety of, in and to the Turruf Punamee, in the same district and province, consisting and comprising four villages, and the lands and grounds appertaining and belonging thereto. Of No. 18, four upper-roomed messuages, tenements or dwelling-houses, situate in Clive-street, in Calcutta, and province, of Bengal; and of No. 56, eight buildings or godowns, lately erected or built at Clive-street, in Calcutta aforesaid; all which last-mentioned houses and godowns in Clive-street aforesaid are comprised and contained in the Map or Plan annexed to the Return to the said Commission of Partition issued on the 31st day of July 1824, and marked (X.) No. 4, one upper-roomed house and three godowns, marked on the said Plan or Map with the letters (A.) (B.) and (C.), and four beguhs, one cattah and one chittack of ground, whereon the said upper-roomed house and godowns are erected and built, and situate to the west of Clive-street aforesaid, and which said house, godowns and land are in the said Map or Plan coloured red. No. 19, one other upper-roomed messuage, tenement or dwelling-house called Pastawall a Battee, situate at Sootanooley in Calcutta aforesaid, with fifteen cattahs and twelve chittacks, and not one beguh, two cattahs and six chittacks, as in the said Commission

mission mentioned, or thereabouts, belonging thereto; and which said house, lands and premises are comprised and contained in the Map or Plan thereunto annexed, and marked (X. No. 5.) and are therein distinguished and marked by the figure (No. 19.) written across the same. No. 20, one also a lower-roomed messuage or tenement, situate at Sootanooley aforesaid, called Secunder Sahibs Battee, and the land whereon the same is erected and built, containing sixteen cattahs and two chittacks, and which said last-mentioned house and premises are comprised and contained in the Map or Plan thereunto annexed, marked (X. No. 6.) and are thereon distinguished and marked by the figure (No. 21.) written across the same. No. 22, a piece or parcel of land or ground situate and lying at Noaths Racey, in Calcutta aforesaid, containing four cattahs and five chittacks, and not about eight cattahs, as in the said Commission mentioned; and which said last-mentioned piece or parcel of land or ground is contained and comprised in the Map or Plan thereunto annexed, and marked (X. No. 5.) and is therein distinguished and marked by the figures (No. 22.) written across the same; and also all that piece or parcel of land or ground situate at Comortollah-street, in Calcutta, houses and premises thereupon erected and built, containing one beguh and two cattahs, and which said last-mentioned piece or parcel of ground is not mentioned or described in the said Commission, but is comprised and contained in the said Map or Plan thereunto annexed, marked (X. No. 7.) And it is further ordered, adjudged and decreed, that the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, do and shall hold and enjoy jointly, as members of a joint and undivided Hindoo family, as and for their six sixteenth parts or shares of the said lands and premises following; that is to say, No. 2, the Pergunnah Baugmarah, in the district of Nuddea and province of Bengal, comprising and consisting of forty-two villages, and the lands and grounds appertaining and belonging thereto. Of No. 4, the Dhee Unandpore and others in the Chucklah Sreenagore, in the same district and province, comprising and consisting of eighty-three villages, and not eighty-two villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned; the twenty-five villages following; that is to say, Nij Donontpore Mallaypore Day, Poohooreah Gungseroh Comer Goreeoh Sorey Day, Govindoonagore, Nij Baluah Dangoh Panteh Potoh Babegoareah Soyah Dangha, Mooda Diobeehoondeeo Soree Dwar Casanney, Chattroh Baghee Beckrampore Mauleepootah, Calleeanpooree, Cooporeebanghee Zoolsoroh, Sumobeah Juggutroy Gungapoors haut Coomarsatpore Radanagore Torampore, and the lands and grounds appertaining and belonging thereto. No. 8, the Turruff Moozeppore, in the same district and province, comprising and consisting of twenty-five villages, and the lands and grounds appertaining and belonging thereto. No. 9, the Dhee Rajahpore, in the same district and province, comprising and consisting of eighteen villages, and the lands and grounds appertaining and belonging thereto. Of No. 10, the Chucklah Dooleahpore and Dhee Kessunpore, in the same district and province, comprising and consisting of 149 villages, and not 189 villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned; the forty villages following; that is to say, Nij Doolaboona Rowatsoh Probungpore Setkoonder Nagore Pantch Barwoh Govindnagore Moororee bautry Mohescoor Deedlore Cossempore Bickenpore Dawoolay Dawool Daith Bhoowoleah Nij Battee Bandoo Ghatta Rogorampore, Bansborreah Chundertollah Goosary Mohepsorepore Bullubpore, Situlpore Gonoputee Bankroh Gessereypore Gorra Khulley Noy Cottee Poora Kholly Mawjutantly Khoosalpore Austah Kholly Nedayah Chuck Doho Dorryapore Bosontpores Roodoorpore Soondah Bareah Poleeah Poteeah Ramoh Ballubpore Raneyuagore, and the sixteen villages in Dhee Restnapore, including Bona Ranarainpore, and the lands and grounds appertaining and belonging thereto. Of No. 11, the Dhee Baguspore, in the Pergunnah Dantea and district of Lessore, in the same province, comprising and consisting of eighty-six and a half villages, and not of eighty-four villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned; the thirty-six and a half villages following; that is to say, Nij Cossiepore Kismut Cossiepore Bander Coloh Benodeahs half Pucoekorahs Cankolan Luddhee Pasoh Banuehpore Nij Tughorey Bistopore Bhopedan Suttaypore Bankroh Auleypore Mookoondoopore Somekah Sookoorkolah Booroorepooree, Nij Ronootorah Moorpoore, Aungabarrah, Soomosdepore, Aumaur Collypore Torajee Hurreah, Ghope Roshaupore Gourypore Bawoojooney Looghey Pookoriah Sankdoho, Tailcoopey Raurehporroh Sampire Dandpore Coolborriah Kismut, Cool Baireah, and the lands and grounds appertaining and belonging thereto. No. 48, the Lalook of Degulram, situate in the district of Nuddea, and twenty-four Pergunnahs in the province of Bengal, comprising and consisting of

V. Legislative Councils; Courts of Justice; Code of Laws.

six villages, together with the lands and grounds belonging and appertaining thereto. Of No. 18, four upper-roomed messuages, tenements or dwelling-houses situate in Clive-street in Calcutta, and province of Bengal; and of No. 56, eight buildings or godowns, lately erected and built at Clive-street in Calcutta aforesaid; and all which houses and godowns in Clive-street aforesaid are comprised and contained in the Map or Plan annexed to the Return to the said Commission issued the 31st of July 1824, and marked (X.) No. 4. three upper-roomed houses and seven godowns, and one beeguh, fourteen cattahs and nine chittacks of ground, whereon the said last-mentioned houses and godowns are erected and built, and situate to the east of Clive-street aforesaid; and which said houses, godowns and lands are in the said last-mentioned Map or Plan coloured green. No. 55, a piece or parcel of land or ground consisting of two cattahs and two chittacks, and not of two and a half cattahs, or thereabouts, as in the said Commission mentioned, situate in or near Nauths Baugaun-street, in Calcutta, in Bengal aforesaid; and which said piece or parcel of land is comprised and contained in the Map or Plan thereunto annexed, marked (X. No. 5,) as is therein distinguished and marked by the figures (No. 55) written across the same number, twenty-one other upper-roomed messuages, tenements or dwelling-houses situated at Sootanooty aforesaid, called Sapoossess Bauty, together with one beeguh, six cattahs and five chittacks of ground, as in the said Commission mentioned, appertaining and belonging thereto, and which said last-mentioned houses and lands are comprised and contained in the Map or Plan thereunto annexed, marked (X. No. 6,) and are therein distinguished and marked by the figures (No. 20) written across the same. And it is further ordered, adjudged and decreed, that the said Isserchunder Paul Chowdry, and the heirs and representatives of Premchunder Paul Chowdry, and the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, do execute each to the other all such proper deeds and conveyances of the aforesaid lands and premises so allotted to them, the said Isserchunder Paul Chowdry and the heirs and representatives of the said Premchunder Paul Chowdry, and the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, as may be necessary for vesting the same in them jointly, their heirs, representatives and assigns, as aforesaid. And it is further ordered, that George Money, esquire, the Master of this Court, do settle such deeds and conveyances, in case the parties shall differ about the same; and that in the meantime the parties do hold and enjoy their respective shares so allotted to them as hereinbefore ordered and decreed, according to the said petition, and that each of the said parties do deliver to the other or others of them the title-deeds, which solely relate to the premises allotted to them respectively. And it is further ordered and decreed, that such deeds and conveyances as relate partly to the said premises allotted to the said Isserchunder Paul Chowdry and the heirs and representatives of the said Premchunder Paul Chowdry, and partly to the said premises allotted to the said Woomeschunder Paul Chowdry and the heirs and representatives of the said Ruttenchunder Paul Chowdry, be brought in and deposited in the office of the said Master of this Court for their mutual benefit, subject to the further order of this Court; and that all parties, at his or their own costs and charges and expenses, may be at liberty to have attested copies of all or any of such deeds, muniments and writings. And it is further ordered and decreed, that the costs of the said Commission of Partition shall be paid and borne by the parties in the proportion of their interests in the said property; that is to say, ten sixteenth parts or shares thereof by the said defendant, Isserchunder Paul Chowdry, and the heirs and representatives of the said Premchunder Paul Chowdry, deceased, and six sixteenth parts or shares thereof by the said Woomeschunder Paul Chowdry, and the heirs and representatives of the said Ruttenchunder Paul Chowdry, deceased. And this Court doth further order and decree, by and with the consent of the said Woomeschunder Paul Chowdry and Woojulmoney Dossee, the widow of Ruttenchunder Paul Chowdry, deceased, their advocates and attorneys in these causes, that James Weer Hog, esquire, the Receiver of this Honourable Court, be, and he is hereby appointed, the receiver of the said six Annas share, allotted jointly to the said Woomeschunder Paul Chowdry and the heirs and representatives of the said Ruttenchunder Paul Chowdry, deceased, and that the said Isserchunder Paul Chowdry do, forthwith, deliver possession thereof to the said Receiver. And it is further ordered and decreed, that the said Receiver do and shall pay to the said Woomeschunder Paul Chowdry one moiety or half part or share of the rents, issues and profits of the six Annas share from time to time as the same shall be received by the said Receiver. And it is further ordered and decreed,

decreed, that it be and it is hereby referred to George Money, esquire, the Master of this Court, to inquire and report whether any and what joint family-worship has hitherto been maintained and kept up at the family dwelling-house at Ranaghat, and whether or not, according to the religious laws and usages, it is fit and proper that such joint family-worship should be continued at the joint expense; and if the said Master shall report that such joint family-worship ought to be continued at the joint expense, that he do then report what sum ought to be set apart for the maintenance and performance of such worship. And this Court doth further order, that this decree shall be binding on the said infant defendant, Gunganarain Paul Chowdry, unless he shall, within six months after he shall have attained his age of sixteen years, show unto this Court good cause to the contrary. And this Court doth further order and decree, that the said Master do make his report on the matters hereby referred to him on or before the second equity day of the next ensuing term. And this Court doth think fit to reserve, and doth hereby reserve, all further directions until after the said Master shall have made his report on the matters hereby referred to him; and in the mean time all parties are at liberty to apply to this Court from time to time as they may be advised. Witness, Sir Charles Edward Grey, Knight, Chief Justice at Fort William aforesaid, the 16th day of September, in the year of our Lord 1828.

Stacey, Attorney. (signed) *J. W. Hogg*, Register.
Tate Romatt, and Master Attorney.
Voe, Attorney.

(A true Extract.)
(signed) *J. W. Hogg*, Register.

(Miscellaneous.) — No. 3. —

LETTER from Board of Revenue, Lower Provinces, to Lord *W. C. Bentinck*, Governor General in Council, &c. &c. &c., *Fort William.*

Board of Revenue, Lower Provinces,
4th February 1829.

MY LORD,

IN continuation of our Letter, dated the 24th ultimo, we have the honour to forward another communication, dated 2d instant, from the Receiver of the Supreme Court.

2. The lands referred to are advertised for sale for arrears of revenue; those in the Jefsore district on the 5th instant, and those in the Nuddea district on the 12th instant; and under any circumstances they must, we are of opinion, be first responsible for the Government Revenue.

We have, &c.
(signed) *J. Pattle*,
W. Blunt.

(Enclosure.)

LETTER from *E. Macnaghten*, Esq., to *G. A. Bushby*, Esq., &c. &c. &c.

SIR,

WILL you have the goodness to inform me whether any thing has yet been settled regarding the subject of my Letter of the 23d ultimo?

I now find that the Collectors of Jefsore and Nuddea have advertised for sale, on the 5th and 12th of this month, some part of the lands allotted, by the decree of the Supreme Court, to Woomeschunder Paul Chowdry, and to the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, for arrears of Revenue due to Government.

I trust that, pending the reference to Government of my Letter of the 23d, the Board will direct the sale to be postponed.

I am, &c.
(signed) *E. Macnaghten*,
Rec. Sup. Court.

Court-house,
3d of February 1829.

V. Legislative Councils; Courts of Justice; Code of Laws.

— No. 4. —

LETTER from Mr. Secretary *Mackenzie* to *J. Pearson*, Esq., Advocate General.

SIR, Council Chamber, 6 February 1829.

I AM directed by the Right honourable the Governor General in Council to transmit to you the Papers noted in the margin,* and to request that you will state your opinion, whether the Supreme Court has jurisdiction in cases touching the succession or transfer of real property in the Mofussil, and how far the judicial and Revenue officers of Government are bound to recognize the Receiver appointed by the Court in the case referred to in the above Correspondence.

* Letter from Board of Revenue, dated 24th January last, with its Enclosures.
Ditto - - ditto - - 4th February - ditto.

2. You will perceive that the revenue of the estate referred to is in arrear, and consequently that an early reply to this reference is urgently required.

3. You will be pleased to return the above Papers with your reply.

I have, &c.

(signed) *H. Mackenzie*, Sec^{y} to the Gov^{t}.

— No. 5. —

LETTER from *John Pearson*, Esq., Advocate General, to *Holt Mackenzie*, Esq., Secretary to Government.

SIR, Fort William, 20 February 1829.

I HAVE the honour to acknowledge the receipt of your Letter, in which you request my opinion whether the Supreme Court has jurisdiction in cases touching the succession or transfer of real property in the Mofussil, and how far the judicial and Revenue officers of Government are bound to recognize the Receiver appointed by the Court in the case referred to in the Correspondence forwarded to me.

2. The appointment of an European officer by the Supreme Court appears to me a circumstance of little moment in itself, and wholly distinct from the possession or occupation of land in the Mofussil, as the right to make such appointment depends upon the extent of the jurisdiction which the Supreme Court possesses; and I entertain very considerable doubts whether the Supreme Court was originally meant to possess any jurisdiction at all beyond the limits of Calcutta, except over British subjects, and certain other persons specified in the Acts of Parliament.

For it is not, I believe, pretended, that the actions which particularly relate to real property out of Calcutta, the action of ejectment, for example, can be brought in the Supreme Court, except in those cases where the lands have been in the occupation of a British subject; and it certainly appears an inconsistency that the same Court should, notwithstanding, be empowered to seize and sequester, or transfer or divide, the lands in the Mofussil.

3. The Supreme Court has, however, at all times, claimed and exercised this right, under the powers alleged to have been conferred by Acts of Parliament and the Charter granted by the Crown.

The statute 21 Geo. III., c. 70, s. 17, gives to it "full power and authority to hear "and determine, in such manner as is provided for that purpose in the said Charter "or Letters Patent, all and all manner of actions and suits against all and "singular the inhabitants of the said city of Calcutta." And the 18th clause of the Letters Patent directs that the Supreme Court shall be a Court of Equity, and assimilates its power and authority to the Court of Chancery in England.

The process of the Court of Chancery was in its origin against the person, in order to enforce a decree; but in time, from experience of the evils attendant on this mode of proceeding, it had recourse to a species of process against the property itself, by means of the writs of sequestration.

The Supreme Court adopted these in conformity with the words which I have cited from the Charter; and by analogy with other steps taken in the English Court of Chancery, as well as to give effect to the peculiar incidents and tenures of land in this country, it has also issued, as in the case submitted to me, the writ of partition.

4. In

4. In this mode of considering the subject, I conceive that the Supreme Court is borne out by the expressions of the Charter, though (as I have intimated already) I am inclined to doubt whether any such power was originally meant to be given. It may be added, that by the Charter of Justice, sect. 9, it seems that the powers of the *Sheriff* are extended over Bengal, Behar and Orissa, though I think it probable that this was originally intended to reach only British subjects and their property; the case of property in the Mofussil in the hands of natives, inhabitants of Calcutta, not being in the contemplation of the framers of the Charter.

The power, however, has been exercised by the Supreme Court from the earliest times, and it is now too late, I conceive, to resist it with effect. At all events, the only regular mode of trying the question is by an appeal to The King in Council; and I ought to observe, that in many instances the decisions of the Supreme Court in circumstances similar to the present have been sent home upon appeal, and confirmed by The King in Council, without its appearing to have occurred to them that the Court had exceeded its powers.

5. In the mean time it appears to me, that the officers of Revenue are not called upon to alter the mode of proceeding prescribed by the Regulations of Government, which have the entire authority of laws in the Mofussil. They are indeed directed, in common with other persons, to be "aiding, assisting and obedient in all things "unto the said Supreme Court of Judicature." But I do not conceive that this injunction would justify a disobedience of the Regulations of Government, merely because a party may infer that some of these Regulations are, in their consequences, inconsistent with the intention of the Supreme Court. I do not, however, perceive in what manner the judicial officers of Government can be affected by the present mode of proceeding in the Supreme Court.

6. At the same time, in looking at the strange and anomalous state of things in this country, arising from the various laws, regulations and institutions that exist, from the powers of the Supreme Court and of the General Government, distinct from and usually independent of each other, at the same time that they are in some measure concurrent, it is easy to see that an interference must occasionally take place, and it is clear that it is most desirable to avoid any unpleasant collision. I trust I shall be pardoned if I take the liberty of suggesting, that perhaps some plan may be devised to carry into effect the decrees of the Supreme Court, without interfering with the independent rights and powers of the Government. I am not sufficiently acquainted with the details of the establishments in the Mofussil to venture upon suggesting any project; but if a mode could be pointed out which should be at once efficient in itself and not objectionable to the Government, I trust that the Supreme Court (constituted as it is) would be desirous of acceding to it.

I have, &c.

(signed) *Jn° Pearson*, A. Gen^l.

— No. 6. —

LETTER from *E. Molony* to the Board of Revenue, Lower Provinces.

GENTLEMEN, Fort William, 23d February 1829.

I AM directed by the Right honourable the Governor General in Council to acknowledge the receipt of two Letters from you, dated the 24th ultimo, and 4th instant, and, in reply, to communicate as follows:

2. His Lordship in Council is of opinion, that you should direct the Collectors who are concerned in the foregoing reference to act under the decree of the Supreme Court, and the application of the Receiver thereupon, in the same way as they would act under a similar decree passed by any of the Mofussil Courts.

3. The registry of the names of the complainants, in cases in which portions of Mehals have been awarded to them, will not, of course, exempt the whole estate from the responsibility which, under the Regulations of Government, attached to it for the punctual payment of the public Revenue assessed on it. But your Board will, of course, be prepared to show any reasonable indulgence in respect to time; and should the parties desire to enter into separate engagements for the Revenue chargeable upon their lands, they will apply for a regular Butwarrah.

V. Legislative Councils; Courts of Justice; Code of Laws.

4. With regard to the Receiver of the Supreme Court having been vested with the management of the minor's estate, the Governor General in Council is of opinion, that, the jurisdiction of the Court being admitted, the rule which restricted Europeans from holding lands or managing estates in the Mofussil, ought not to be considered applicable to that officer.

5. In regard to the jurisdiction of the Court of Wards as liable to be affected by the case, his Lordship in Council observes, that as the estate is joint undivided property, of which some of the sharers are majors, there can be no reasonable ground to apprehend collision on that score.

6. You are requested to issue to the several Collectors concerned in the present reference, such instructions as you may deem necessary to enable them to act in consonance with the above remarks and orders.

7. His Lordship in Council proposes to take into early consideration the measures to be adopted for the purpose of obviating the inconveniences which are to be apprehended from the present state of the laws and practice of the Court.

I have, &c.

(signed) *E. Molony,*
Dep^{y} Sect^{y} to Gov^{t}.

P. S.—The original Papers which accompanied your Letter, under acknowledgment, are herewith returned.

—No. 7.—

LETTER from Board of Revenue, *Fort William*, to *W. B. Bayley*, Esq., Vice-President in Council, &c. &c. &c., *Fort William.*

Sudder Board of Revenue, Fort William,
6th March 1829.

HONOURABLE SIR,

WE have the honour to acknowledge the receipt of the orders of the Governor General, conveyed to us in Mr. Deputy Secretary Molony's Letter, dated the 23d ultimo, on the subject of the application of the Receiver of the Supreme Court, submitted for the orders of Government, with our addresses of the 24th of January, and 4th ultimo.

2. In conformity with those instructions, we have directed the local Collectors concerned in that reference to act under the decree of the Supreme Court, and the application of the Receiver thereupon, in the same way as they would act under a similar decree passed by any of the Mofussil Courts, and to register the names of the parties in the manner directed by the decree of the Court; though we may here observe, that no Mofussil Court can, under the provisions of Regulation V., 1827, appoint a manager to an estate, the selection and appointment of whom is, in all cases, vested in the Revenue authorities.

3. But as we are of opinion that great inconvenience is likely to result from the appointment of an European officer of the Supreme Court to collect the public Revenues, and as such officer is not, we conceive, amenable to the Mofussil Courts, or liable to the penalties prescribed for undue exaction of rent, illegal distress, disobedience or resistance of process, or other act in violation of the Regulations prescribed for the realization of the public Revenue, it may, we conceive, have been the intention only of the Supreme Court, that the Receiver should collect the surplus proceeds of the estate, to which the proprietor or proprietors may be entitled in excess of the fixed demand of Government, and which we conceive it probable is the only portion of the assets of the estate to which the decree of the Court is intended to apply.

4. On this point, therefore, we would propose, with the sanction of Government, to apply for further information from the Receiver to the Supreme Court; likewise whether it is proposed to collect the rents by means of Native or European agency; also, to whom the Revenue authorities are to look for payment of the public dues, or to direct any prescribed process in case of default, should it for any reasons be deemed inexpedient to proceed to a sale of the lands in satisfaction of any demand of Government.

We have, &c.

(signed) *W. Blunt.*

— No. 8. —

(Secret Department.)

MINUTE by the Honourable *C. T. Metcalfe*; dated 15 April 1829.

THE contention which has for some time past been in progress between the Government of Bombay and His Majesty's Court of Judicature at that Presidency, without any apparent prospect of termination, demands the serious consideration of the authorities at home, who may possess the means of rectifying an evil discreditable to our character and dangerous to our power in India.

Discreditable to our character in the estimation of the natives of India as all such dissensions must necessarily be, and dangerous to our power, because inasmuch as that depends on the respect and awe entertained of us by the native population, nothing has so much contributed to confirm those sentiments as a belief in our perfect union among ourselves, and nothing can more certainly tend to shake them than the appearance of discord between our highest authorities.

It is therefore necessary to determine whether, in matters of doubtful dispute, the Government or the Court of Judicature at the several Presidencies shall be supreme; whether the Government must in every case submit to any exercise of judicial power which the Court may assume, or the Court be restrained by the will of the Government, whenever the latter may be sensible of political reasons of sufficient importance to induce its interference, either to resist a new assumption of power, or to suspend the exercise of one doubtful or dangerous, which may have been before admitted.

To me it seems quite clear, that the supreme power ought to rest with the Government; and that in any case in which the exercise of the powers of the Court might be deemed injurious to the safety or welfare of the state, the Government ought to possess authority to suspend the functions of the Court as regarding that particular case, and the Court be bound to acknowledge and abide by the restrictive power of the Government pending a reference to superior authority in England.

The possession of such a power by the Government appears to be the more necessary in cases in which new and doubtful powers are assumed by the Court, such as have never been before exercised, and are disputed and denied by competent interpreters of the law.

In arguing for the possession of restrictive powers by the Government in India over the Court of Judicature, I only propose what, as I conceive, exists in every country in the world; a saving power in the Government for the benefit of the State over all parts of the governing machine, of which the judicial department is one.

There is no danger to the national power in England from an undue stretching of the authority of Courts of Justice. There is no probability there that the Courts can misunderstand their functions; but if there were any chances either of error or of mischief, the Legislature is at hand to restrain or rectify.

What the Legislature is to Courts of Justice in England, the local Government in India ought in reason to be to Courts here; that is temporarily, and until the result of a reference to England can be known. If not so perfect and satisfactory an instrument of control as the Imperial Legislature, it is the best that can be had on the spot. And unless it can be maintained that the Government must submit, whatever may be the consequences, to any extension of jurisdiction that any Court of its own pleasure may assume, it must follow that a provisional and temporary restrictive power ought to be vested in the Government; for it can never be supposed that a disgraceful contest between the two powers, as separate and opposed to each other, ought to be exhibited to conquered India; to excite the anxiety and fears of the well affected, and the hopes and ridicule of the disaffected and hostile.

When such a contest commences, there are no means of stopping it in the present state of relations between the Government and the Court. The Government cannot sacrifice its subjects to an assumption of power which it believes to be illegal. The Court having once declared the assumption to be legal, considers itself interdicted from rejecting any application founded thereon, and from listening to any compromise or suspension of the power. It regards and treats the members of the Government as so many culprits, who are punishable for contempt of the King's Bench. The feelings of the parties become engaged in the quarrel. Each thinks it dishonourable to yield. The Government will not give up its native subjects to laws and jurisdictions to which they have never before been held amenable. The

V. Legislative Councils; Courts of Justice; Code of Laws.

Judge conceives that he is supporting the independence of the British Bench, and maintaining a praiseworthy contest against lawless interference. The struggle is interminable, and may be renewed continually by fresh cases involving the disputed point.

At this immense distance from the control of the Mother Country, there surely then ought to exist a local authority vested with power to put a stop to these unseemly contentions. If it can be said with any justice that a Court of Law may push its authority to any extent, and that no apprehension of consequent mischief and danger can justify a Government in refusing obedience, then let it be determined, that the Government must, in all cases, submit to the will of the Court. It would be better that the supremacy of the Court should be acknowledged and known, than that room for contention should remain.

There are, nevertheless, reasons why the supreme power should rest with the Government, and not with the Court.

The political power of a state, exercised by its Legislature, is everywhere superior to the judicial, which is subordinate, performing only the functions conferred on it by the former, which are liable to any modifications that the Legislature may enact.

Against this it may be urged, that the real Legislature of British India is the national Legislature in England, and not the local Government; but, on the other hand, the local Government, performing locally the functions of political administration, approaches nearest to the representation of the distant home Government, while the Judicial Court cannot properly represent the legislative power.

Moreover the occasions on which the Government and the Court are likely to be involved in disputes, are when the Court is extending its own jurisdiction beyond is former limits, that is, assuming powers not before exercised. The check, therefore, ought to be vested elsewhere, for we know from experience that the Court is not likely to check itself; the exercise and extension of power being at all times enticing to human nature.

The Court in such cases may be said to be the aggressor, and the Government on the defensive. It is more equitable, therefore, that the Court should be required to pause, than that the Government should be compelled to submit to new assumptions.

No new assumption by the Court can take place without drawing more within its jurisdiction our native subjects, already amenable to other Courts established for their protection. They can only look to the Government for defence against the exercise of power by an authority to which they have never considered themselves subject. They are entitled to this defence, and the Government ought to have the power of affording it.

The restraining power contended for herein on the part of the Government, should be exerted of course with due consideration and forbearance, and subject to serious responsibility.

If it were deemed inexpedient to confer it on the subordinate Government of each Presidency, it might be confined to the Supreme Government, or the exercise of it by the subordinate Governments might be subject to the confirmation and revision of the Supreme Government; which course would rectify the possible errors of local irritation, without impairing the efficiency of immediate remedy.

Next to the importance of preventing unseemly contention between independent British authorities in this distant region, by conferring somewhere the power of local supremacy pending a reference to England, it is very desirable that the powers to be exercised by His Majesty's Courts of Judicature, that is, the extent of their jurisdiction, should be accurately defined.

Out of the want of clear definition and of general understanding, arise all the disputes which take place; for respecting the acknowledged customary powers of the Courts there are no disputes.

It is unquestionably due to our native subjects, that they should be informed to what Courts and to what laws they are amenable. At present they are amenable to the Courts established in the provinces in which they reside, and subject to a modified code of native laws, both in civil and in criminal matters; but suddenly, by some legal hocus pocus, incomprehensible to them, they find themselves dragged into the jurisdiction of the Court of English Law, armed with tremendous power, from which there is no reprieve, where they are beset by unintelligible forms and bewildering complexities, and ruined by intolerable expense.

It never could have been intended by the British Legislature, that our Indian subjects should be amenable to two sets of Courts and two codes of laws; but such

is now the effect of the gradual extension of the jurisdiction of His Majesty's Courts, some of the steps in which have been imperceptible, or at least unnoticed.

When His Majesty's Supreme Court was first established in Bengal, it was understood that its civil jurisdiction extended to claims against the Company, and against British subjects, and to claims of British subjects against native subjects in cases wherein the latter had agreed to submit to its decision and its criminal jurisdiction, to British subjects, and to persons in the service of the Company, or of any British subject, at the time of the offence.

The establishment of this power, independent of the local Government, was soon followed by disputes, disreputable in their circumstances, and dangerous to the public safety.

The Court had not been long in the exercise of its functions, when it extended its practical jurisdiction indiscriminately to all natives; nothing more being necessary to procure a writ against any of them than an affidavit that the person sued was within the jurisdiction.

The collection of revenue and the administration of justice in the provinces, were obstructed by writs of *habeas corpus*, and prisoners brought up by these writs were set at liberty by the Court.

Neither the Government exercised by the Company, nor that of the Newab of Moorshedabad, was respected. Both were declared subordinate to the Court. Had the usurped powers of the Court been allowed to proceed without check or opposition, the Government must have been destroyed.

The powers assumed, the pleas by which they were maintained, the tone of self superiority, and of contempt for the local Government, which mark the proceedings of the Court at that time, are remarkably similar to those which appear in the recent proceedings of the Court of Bombay.

The proceedings of the Supreme Court of Bengal having been loudly complained against, its powers were restrained by a subsequent enactment.

Since which, either from a better understanding of the intentions of the Legislature, or from mutual moderation in Governors and Judges, or from the submission of Government to gradual or quiet encroachments, until the present contention at Bombay, there has not been the same degree of misunderstanding and dispute regarding the powers of the King's Courts; but it is evident from what is now passing at that Presidency, and from what has before happened both at Madras and in Bengal, that the seeds of dissension still exist in the undefined condition of the jurisdiction of all the Courts.

The Courts at Madras and Bombay were established at different periods, subsequently to that of the establishment of a Court in Bengal. The Charter of the Madras Court differs in some degree from that of the Calcutta Court, although intended avowedly to confer only the same powers. The Bombay Charter is formed, I presume, on the model of that of Madras.

Besides jurisdiction over all British subjects, the Courts have an acknowledged jurisdiction over native subjects residing within the appointed limits of the several cities designated Presidencies; disputes which have occurred, and are likely to occur, refer to the extent of the Court's jurisdiction over native subjects beyond those limits.

We have seen a native of India, lately a servant of the King of Oude, but residing within the British frontier for refuge, arrested on a false allegation of debt, many hundred miles away from Calcutta, by an officer of the Supreme Court, and placed in the power of his pretended creditor and undoubted enemy, on some legal fiction of his being a constructive inhabitant of Calcutta, in consequence of dealings with parties residing there.

If such a plea brings natives within the jurisdiction of the Supreme Court, there is not a mercantile native residing in any part of India who is not amenable; for all of them have commercial agents or dealings in Calcutta.

To call any one a constructive inhabitant of Calcutta who has never been within many hundred miles of the place, whatever it may be in law, seems an outrage against common sense. And to arrest such a one at that distance by a writ from the Supreme Court, he never dreaming of his liability to such jurisdiction, being at the same time amenable to provincial Courts and provincial laws, must surely be considered as a gross violation of natural justice.

It may be reasonably presumed, that the Legislature did not intend to confer such jurisdiction on the Court; but we know that it has been assumed.

We have seen property seized in the most remote provinces under the Bengal

V. Legislative Councils; Courts of Justice; Code of Laws.

Presidency, as the property of a bankrupt firm of Calcutta, and made over wholly to another firm of that place, on a bond; although creditors of the bankrupt firm, and claimants against it, were present in those provinces; although the transactions onwhich they claimed took place in those provinces; although the property seized was properly their own, never having been paid for; although they were entirely ignorant of the existence of those peculiar laws, which at once took away their property and deprived them of all means and all chance of recovering any part of the debts due to them. The awe of the Supreme Court deterred the local authorities from attempting to maintain the rights of the local creditors. Can any one say that this is justice to our native subjects, or that a Court, a thousand miles distant, ought to possess a jurisdiction so partial to the few, so destructive to the mass?

We recently heard that a native not residing within the Court's jurisdiction, nor amenable to it, according to common understanding, on any other account, was to be tried before the King's Court, on the charge of a crime committed beyond the limits of the jurisdiction, in order to establish the principle, that all natives, notwithstanding those circumstances, might be brought before the Court for trial. I do not know how this matter ended; but if the trial took place, it was certainly a new encroachment, and will form a precedent for further extension of jurisdiction.

We have still more recently had occasion to observe, that landed property in the provinces beyond the limits of the Court's local jurisdiction, is somehow brought within its jurisdiction; that it is decreed away from one party to another, or attached and sequestered at the Court's pleasure; and that European officers of the Court are appointed receivers of the rents, by which the regulations of the Government for the administration of the provinces are set at nought. It is the opinion of the Advocate General, that the Legislature did not intend to confer on the Court the powers thus assumed, but that they have been too long exercised to be now successfully combated.

The instances above mentioned have occurred in the proceedings of the Calcutta Court, where we have undoubtedly able, upright, moderate and conciliatory Judges.

What is here required, is a clear definition of the extent of the Court's jurisdiction with regard to native subjects resident beyond the limits of its local jurisdiction; and it cannot be denied that this definition is necessary, unless it can be affirmed that it is just to expose our native subjects to the operation of sets of laws, and of two independent jurisdictions.

The Court at Madras at one time assumed the power of executing its writs in foreign territories, acted on the assumption, and attempted to justify it by reference to its Charter. This erroneous conception of the Court's powers was reported to England. The opinion of high legal authorities was given against it, and communicated to the Judges at Madras. The pretension has not since been revived; but there is nothing to prevent its renewal, if adopted by any Judges in time present or to come.

The Madras Court has assumed the power of destroying the sovereign rights of the Government, by decreeing to others public Revenues granted by the Company to an individual. The exercise of this assumed power, if unresisted, might alienate in perpetuity the whole of the public Revenue, which, in virtue of its sovereign rights, the Government might grant in assignment, under limitations as to time and persons. Moreover, the sovereign acts of the Government in the disposal of its public Revenue beyond the limits of the Court's local jurisdiction, being once rendered liable to subversion by the fiat of the Court, no security for the Revenue or for the possession of India would remain. A limitation of the Court's powers on this subject, therefore, is also necessary.

At Bombay, the Court has, within my recollection, sent its bailiffs into a foreign territory to seize a subject of a foreign Government. No pretension of this kind, I imagine, could be maintained by any Court; it may therefore be supposed that the act was committed by mistake, owing to false swearing. And it is remarkable, with regard to the proceedings of the King's Courts in India, that any writ, however injurious to the individual affected by it, may be obtained by false swearing. Two persons have only to swear that a native is liable to the Court's jurisdiction, and he may be dragged to the Presidency from his home, distant a thousand miles, in a country and climate extremely different, although he be not in the slightest degree by law amenable to the Court's jurisdiction. This matter, in justice to our native subjects, certainly demands a remedy. Such are the forms or practice of the Court, that its most questionable powers, prior to trial, may be wielded with

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all their irresistibility at the discretion of the attornies, with little or no check, or even knowledge, on the part of the Judges.

One of the powers recently assumed by the Court at Bombay is that of releasing native convicts, condemned according to law by the Provincial Courts. This power being assumed, it is only necessary that one or two persons swear that such a one is illegally confined, and forthwith issues a writ of *habeas corpus*, addressed to the magistrate of the district, or the gaoler or some officer of the Provincial Court, ordering the bringing up of the convict before the King's Court. The return that he has been sentenced to imprisonment by the Provincial Court is not deemed sufficient. The King's Court does not recognize the existence of any right in the Provincial Court to punish. It professes to know nothing of the powers of such a Court. The Provincial Court itself must come to trial. It must be proved to the satisfaction of His Majesty's Justices that such a Court exists and has power to punish, and that the Government has the right to institute such a Court; else, without further ceremony, and as a matter of course, the prisoner is released.

The exercise of this power by the King's Court, with regard to prisoners sentenced by the judicial Courts established throughout the interior of British India, seems to be quite incompatible with the independent existence of those Courts. Either the King's Courts ought to be restrained from interfering with separate judicial institutions which they cannot efficiently control, or they ought to be connected and blended with those institutions in one united establishment for the due administration of justice. Their interference at present is neither necessary for justice, nor, if necessary for that purpose, could it be effectual, under the present system, over the immediate extent of territory subject to the provincial Courts. It must now tend to produce mischievous counteraction, to bring into contempt the local Government and its judicial institutions, and to impair the administration of justice.

Similar powers were assumed by the King's Court when first established in Bengal. Prisoners of the Provincial Courts were then brought up in like manner by writs of *habeas corpus*, and released. But since the powers of the Court were restrained, the practice has ceased, and its assumption by the Court at Bombay does not profess to be founded on those precedents.

Another power assumed by the King's Court at Bombay, but resisted by the Government at that Presidency, is that of taking native wards out of the hands of their guardians, and bringing them to the Presidency, to be disposed of at the pleasure of the King's Court; neither the wards nor their guardians being subject to its ordinary jurisdiction.

If the Court possess this power legally, there is not a ward in British India whose affairs may not be brought within its jurisdiction. Interested parties have only to swear that the ward is illegally detained by his guardian. The whole native property of our dominions may successively be drawn into the Chancery of the King's Court; the Court all the while acknowledging that its ordinary jurisdiction does not extend over the parties. What is the difference whether the jurisdiction be called ordinary or extraordinary, if it be assumed and exercised? If it had been intended that the natives of India and their property should be liable to the jurisdiction of the King's Court, they would not, it may be presumed, have been placed under a separate jurisdiction.

Every power exercised or assumed by the King's Court, or any other, is of course professedly and intentionally for the purpose of rendering justice or redressing a grievance; but it seems to be forgotten that an extension of jurisdiction over those not before amenable to it may be oppression instead of justice.

According to the present practice of the King's Courts, a native of the snowy mountains of Himala, not amenable to the Court's jurisdiction, and utterly unconscious of the existence of such a Court, may be dragged a distance of 800 miles or more, to the swamps and jungles and stifling heat of Bengal, merely to show that he is not amenable to jurisdiction, and go back again, fortunate if his plea be admitted, and if he do not perish from the contrast of climate.

If it be deemed really necessary that our native subjects, without regard to distance of residences, should be amenable to the Court of English Law, rules ought to be framed to let them know clearly that they are so, or how they may become so.

But it ought never to be that the jurisdiction should remain undefined, and subject to unlimited extension at the pleasure of the Judges.

Who does not know that it is natural to human frailty to seek an increase of power? The Judges are generally well disposed to extend their jurisdiction. The

V. Legislative Councils; Courts of Justice; Code of Laws.

barristers and attornies of the Court have the strongest inducements of personal interest to urge the extension, as their profit and their livelihood depend on their quantity of business brought within the jurisdiction. In reason the Court ought not to have the power of determining its own jurisdiction; yet it holds its power in this respect to be absolute and indisputable.

There is at present a single Judge on the bench at Bombay. Whatever powers he may assume and exercise, he holds obedience to be due to his will as the law. The united opinions of all the Judges of the Calcutta Court, all the Judges of the Madras Court, and all the barristers of all the three Courts, would be of no avail against his single will. He is the only interpreter of the law in his own Court, and his opinion, even if against that of all the world besides, and although leading to the extension of his own powers, is to have despotic force, and to affect the condition of millions in the most important concerns of mortal life.

It is surely then necessary that the law should be so defined as to be universally understood, and as free as distinctness can make it from the possibility of misinterpretation.

It appears to me, from the foregoing statements and considerations, to be established, 1st. That it is necessary distinctly to define the jurisdiction of the King's Courts with regard to native subjects; 2d. That a supreme power, to prevent protracted disputes and collision between the Governments and the Courts in doubtful cases, ought to be vested either in the Governments or the Courts, and preferably in the former.

Before I submit in detail the suggestions which occur to me, with a view to those objects, I will venture to offer some remarks as to the jurisdiction actually possessed by the King's Courts under existing enactments and charters.

As there are differences of opinion on this question among Judges and barristers learned in the law, it may seem presumptuous in one who has no pretensions to legal knowledge to form any opinion on the subject. But it rather appears to me, that there is from that circumstance encouragement for an unlearned man to seek the truth under the guidance of common sense, since it is manifest that there must be error, one way or the other, in the maze of technicality.

Sense and meaning are at the bottom of all legislation, however difficult it may subsequently be to discover them in the entanglements of professional language.

It seems to me, then, after an attentive perusal of the Acts and Charters relating to the Courts of Calcutta, Madras and Bombay, combining the whole series of legislation on this subject, that the intention of the Legislature is clear and distinct.

According to this, I should say, that the jurisdiction of the Supreme Court extends over the following classes:

1. British subjects throughout India, in all matters civil or criminal; by the British subjects wherever it is used in the enactments and Charters. Native subjects are evidently meant to be excluded.

2. The inhabitants of Calcutta, Madras and Bombay, within fixed limits, whether natives or others, in all matters civil or criminal, but natives in some civil matters to have justice administered according to Hindoo or Mahometan law.

3. Native subjects, servants of the Company, or of any British subject, for acts committed as such, with limitations in certain civil matters.

4. Native subjects, in civil matters, for transaction in which they have bound themselves by bond to be amenable to the King's Court.

All natives not included in either of the three classes above mentioned, seem to be exempt from the jurisdiction of the King's Court. If they are not so, it would be useless to specify those who are amenable. If not exempt, they would be more generally amenable than the inhabitants of Calcutta, Madras or Bombay, and the other classes of natives specified, because in that case they would be amenable without limitations, not being included in those classes for whom limitations are provided. It is quite clear that this could not have been intended, and the only alternative is, that they are exempt, which appears to be the design of the Legislature.

Of the four classes above specified, as amenable to the King's Courts, the law seems sufficiently distinct regarding three.

There is no doubt that all British subjects are in every respect amenable, with certain specified exceptions.

There is no doubt that the law makes amenable for wrongs and trespasses native subjects in the service of The King or Company, or of British subjects, and generally in all criminal matters also.

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There is no doubt that native subjects are made amenable by the law in civil transactions in which they bind themselves to be so.

There is no doubt that native subjects, inhabitants of Calcutta, Madras and Bombay, are amenable; but with regard to this class, the powers of the Courts ought to be defined; for no native, after proceedings which have taken place, can feel secure that he may be converted into an inhabitant of either of those Presidencies by some legal legerdemain, although he may never have been within a thousand miles distance of the place; and there is no property in any part of British India that may not, by the extended construction apparently put on the law, be brought within the grasp of the King's Court. A distinct definition of the meaning intended by the Legislature to attach to the term inhabitant, would relieve our native subjects from much uncertainty and alarm which now prevail, from apprehension of their being made liable to the process of the Court.

The Court at Bombay draws a distinction between ordinary and extraordinary jurisdiction, and on the ground of the latter claims unlimited jurisdiction over all native subjects within the territories subject to Bombay.

This claim seems to be founded on that part of the Charter of the Court which grants jurisdiction in the following terms:

"The Court invested with a jurisdiction similar to the jurisdiction of the King's "Bench in England."

The above is the marginal note. The text is as follows:

"And it is our further will and pleasure, that the said Chief Justices shall "severally and respectively be, and they are, all and every of them, hereby "appointed to be Justices and Conservators of the Peace, and Coroners within "and throughout the settlement of Bombay, and the town and island of Bombay, "and the limits thereof, and the factories subordinate thereto, and all the territories "which now are or hereafter may be subject to or dependent upon the Government "of Bombay aforesaid, and to have such jurisdiction and authority as our Justices "of our Court of King's Bench have and may lawfully exercise within that part of "Great Britain called England, as far as circumstances will admit."

This paragraph describes the nature of the Court's jurisdiction, but does not define the persons over whom it extends. If all in the Charter relating to the Court's jurisdiction were contained in that paragraph, there could be no doubt that the intent of the Charter must have been to confer a jurisdiction similar to the jurisdiction of the King's Bench over all the territories of Bombay; but, taken with the other contents of the Charter, it seems equally clear to me, that the jurisdiction thus granted is only to be exercised over those who are declared to be subject to it. I proceed to that part of the Charter which defines the jurisdiction.

"The jurisdiction of the Court defined:

"And we do further direct, ordain and appoint, that the jurisdiction, powers "and authorities of the said Supreme Court of Judicature at Bombay shall extend "to all such persons as have been hereinbefore described and distinguished in our "Charter of Justice for Bombay by the appellation of British subjects, who shall "reside within any of the factories subject to or dependent upon the Government of "Bombay, and that the said Court shall be competent and effectual, and shall have "full power and authority to hear and determine all suits and actions whatsoever "against any of our said subjects, arising in territories subject to or dependent upon, "or which hereafter shall be subject to or dependent upon the said Government, "or within any of the dominions of the Native Princes of India in allowance with "the said Government, or against any person or persons who, at the time when "the cause of action shall have arisen, shall have been employed by, or shall have "been, directly or indirectly, in the service of the said United Company, or any "of the subjects of Us, Our heirs or successors; and the said Court, hereby esta-"blished, shall have like power and authority to hear, try and determine all and all "manner of civil suits and actions, which, by the authority of any Act or Acts of "Parliament, might have been heard, tried or determined by the said Mayor's "Court at Bombay aforesaid, or which may now be heard, tried or determined by "the said Court of the Recorder of Bombay; and all powers, authorities and "jurisdictions, of what kind or nature soever, which, by any Act or Acts of Parlia-"ment, may be or are directed to be exercised by the said Mayor's Court, or by "the said Court of the Recorder of Bombay, shall and may be as fully and "effectually exercised by the said Supreme Court of Judicature at Bombay, as "the same might have been exercised and enjoyed by the said Mayor's Court, or "by the said Court of the Recorder at Bombay."

V. Legislative Councils; Courts of Justice; Code of Laws.

It would be tedious to repeat the technical language of every section of the Charter regarding the jurisdiction. The next section to the one above quoted defines the jurisdiction as to the inhabitants of Bombay. All suits and actions brought against the inhabitants of Bombay to be determined by the Court; but in the cases of "Mahometans or Gentoos," their inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, to be determined by their respective laws and usages, or by such laws and usages as the same would have been determined by in a native Court; and when one of the parties shall be Mahometan or Gentoo, by the laws and usages of the defendant. In all suits to be determined by the laws and usages of the natives, the Court is to make such rules and orders for the conduct of the same, and to frame such process for the execution of judgments, sentences or decrees, as shall be most consonant to the religion and manners of the natives and their respective laws and usages. The same with regard to compelling the appearance of witnesses, and taking their examination, so that all suits may be conducted with as much ease and as little expense as shall be consistent with the attainment of substantial justice.

I will here pause to ask, if it was intended, as assumed by the Court at Bombay, to grant jurisdiction similar to that of the King's Bench over all native subjects under the Bombay Government, why was the jurisdiction of the Court defined and limited? If it was intended that the native inhabitants of the whole territory should be liable to the jurisdiction, why were the native inhabitants of Bombay specified? When so much care was taken to secure to the native inhabitants of Bombay, made liable to the jurisdiction, the benefit of their laws and usages, why was not the same privilege specifically extended to the inhabitants of the provinces, if it was not clearly intended to exclude them from the jurisdiction?

The Charter contains other limitations and restrictions regarding the jurisdiction of the Court over natives.

It specifies that no person shall be subject to the jurisdiction of the Court by reason of being a land-holder or land-owner, or farmer of land or of land-rent, &c. &c. It is unnecessary to detail all the specifications.

It may be asked, why it has been thought necessary specifically to exempt those persons? The cause is, that when the Supreme Court was first established in Bengal, the Judges chose to consider the persons so described as subject to the jurisdiction, on the plea of being servants of the Company. In order to correct this error, and rectify the mischief which had arisen and was sure always to arise from it, the declaration for their exemption was passed by the Legislature, not to exempt them from a jurisdiction to which native subjects generally were liable, but to prevent their being subjected on an erroneous pretence to a jurisdiction from which native subjects generally were free.

The character of this exemption and the circumstances which led to it are strong corroborations of the general freedom of native subjects from the jurisdiction.

Further, care is taken in the Charter to prevent those who, by reason of being servants of the Company or of British subjects, are liable to the jurisdiction, from subjection to it in any unnecessary manner or degree. Thus natives of this class having been previously by specific enactment brought under the jurisdiction, are again exempted from it, except in special cases; it being provided that they "shall "not become subject to the jurisdiction of the Court in any matter of inheritance or "succession to goods or lands, or in any matter of dealing or contract between party "and party, except in action for wrongs or trespasses only."

What has been extracted from the Charter is sufficient to show that only certain classes of native subjects are liable to the jurisdiction of the King's Court, and that for all who are liable care is taken to secure the enjoyment of their own laws and usages.

Is it possible then to suppose, that by any part of the Charter it was intended to grant powers to the Court which should completely nullify all the limitations and restrictions specifically imposed, render nugatory the protection granted to native subjects, and overthrow or bring into contempt the whole system of civil and criminal jurisprudence established for the administration of justice to our native subjects beyond the limits of the Court's local jurisdiction?

To me it seems impossible that the Charter was ever designed to confer such powers; and this opinion is corroborated by the preamble to the Charter, wherein it is stated that the jurisdiction of the Court, both as to native and British subjects, is to be subject to the same limitations, restrictions and control as the Supreme Court at Fort William is subject to; which can only, I conceive, mean, that the limitations,

limitations, restrictions and control subsequently specified, and similar to those previously established in the Court at Fort William, are to be valid and binding; for if they are not, of what use are they? Is it likely that His Majesty, from whose royal authority the Charter issues, under authority from the Legislature, would have treated the natives of India with tantalization and ridicule, by granting them protection against the Court in one part of the Charter, and rendering it utterly void in another?

I have perused the Charter with attention, and the impression which it leaves on my mind is, that all the powers which it grants are given both with reference to the limitations and restrictions that it specifies. But if the technical language of the Charter be unintelligible to an unlearned man; if there be a hidden meaning which the learned alone can apprehend, giving unlimited unrestricted power, notwithstanding all the limitations and restrictions specified, then I would observe, that the King's Charter can only give what is authorized by a previous enactment of the Legislature. Unless, therefore, the powers claimed by the Court at Bombay, under the supposition that they are granted by the Charter, are conferred by some act of the Legislature, they are illegal, and consequently null and void.

I do not mean to admit that powers really are granted by the Charters which are not confirmed by the Legislature; on the contrary, I maintain the reverse. But if it be asserted that the powers claimed are given by the Charters, still they are illegal, unless it can be shown that they are consistent with the statutes. No powers granted by the Charters can abolish the restrictions fixed by the Legislature.

Those powers do not appear to be granted by any Act. As far as the intention of the Legislature can be understood from the enactments bearing on this subject, the jurisdiction of the King's Courts with regard to native subjects is strictly limited to certain specific classes.

The Charter of the Court in Bengal grants jurisdiction similar to that of the King's Bench, as well as the Bombay Charter. The Bengal Charter is founded on the 13th Geo. III., ch. 63, sec. 13, &c., which says nothing of that peculiar jurisdiction, but limits and defines the powers of the Court as to native subjects.

But the Court having misunderstood and exceeded its powers with regard to natives, a new enactment took place in sec. 9, ch. 70, 21st Geo. III., for removing all doubts concerning the persons subject to the jurisdiction of the said Supreme Court, by which it was enacted that persons, by reason of being land-owners, landholders, farmers of land or land-rent, and other classes specified, should not be subject, that is, should not on that account be considered as servants of the Company, on which ground they had before been made amenable by the Court.

The same Act specifically gives jurisdiction to the Court over all the inhabitants of the city of Calcutta.

The Acts and Charters establishing the Courts at Madras and Bombay are similar to those which relate to the Court of Calcutta, with some differences immaterial as to the question now under discussion.

From the preceding details it appears to me to be established, that the jurisdiction of the Courts is limited by specific restrictions, and that they do not possess any extraordinary extended jurisdiction independent of the limitations prescribed by the Legislature.

Since writing the preceding, I have seen extracts from the opinion on this subject delivered from the bench by the Judge who now singly presides in the Bombay Court.

If I understand that opinion accurately, the learned Judge maintains that all the limitations and restrictions of jurisdiction contained in the Charter refer solely to civil jurisdiction, and that the criminal jurisdiction of the King's Court extends universally over all the inhabitants of the territory subject to the Presidency to which the Court may belong.

This interpretation of the law, if correct, seems at least to be new, for it has generally been understood that the jurisdiction of the Court in criminal matters is restricted with regard to natives; and the extension of the powers of the Court beyond its local limits, whenever so extended with regard to natives, has hitherto been defended on some plea that sought to bring them within the limitation of the jurisdiction.

It appears to me that that part of the Charter in which the jurisdiction of the Court is expressly defined, under this heading, "Jurisdiction of the Court defined," does not define the limitations and restrictions of the jurisdiction with regard to civil jurisdiction alone, but generally with regard to jurisdiction criminal as well as

V. Legislative Councils; Courts of Justice; Code of Laws.

civil. After saying generally that the jurisdiction, powers and authorities of the Court shall extend to all British subjects, it proceeds to give power to hear and determine all suits and actions whatsoever, (therein, I presume, including criminal actions,) against British subjects and natives in the service of the Company. It goes on to give power to hear, try and determine all civil actions (herein excluding all criminal actions) which might before have been tried by the Mayor's Court or Recorder's Court; it next confers all powers, authorities and jurisdictions formerly exercised by those Courts; and then gives power to hear and determine all suits and actions (including, I presume, criminal) against the inhabitants of Bombay.

It also appears in another part of the Charter, that the criminal jurisdiction of the Court is expressly limited to the " town and island of Bombay, and the limits " thereof, and the factories subordinate thereto;" which criminal jurisdiction is specially extended, as respects British subjects, to acts committed either in the territories of Bombay or in the dominion of allied Native Princes; and this specific extension of it to British subjects beyond the local limits, seems clearly to exclude natives not within those limits. Such also has been the practical operation of the criminal jurisdiction of the Court hitherto.

If the judgment of the Judge at Bombay be right, all practice hitherto has been wrong; and it becomes the more necessary for the Legislature to determine what really is right. We cannot, in justice to our native subjects, leave them liable to two independent jurisdictions, or ignorant of what jurisdiction they are amenable to.

It is curious to observe how this claim to universal criminal jurisdiction has commenced its operation; the Judge who asserts it admitting at the same time that the civil jurisdiction of the Court, with regard to natives, is limited. The operation of this claimed criminal jurisdiction, is to drag a ward from the protection or control of his guardian, and bring the ward and his affairs into Court. There is not an estate belonging to any minor, throughout all India, that might not by this sort of criminal jurisdiction, be swallowed up by the officers and practitioners of the King's Court.

Enough, I trust, has been said to show that we are bound in duty to give to our native Indian subjects greater certainty as to the jurisdiction to which they are amenable, and greater security against liability to two independent jurisdictions, than they now enjoy.

With a view to promote this object, I shall proceed to submit for consideration two schemes for the regulation of the jurisdiction of the King's Courts in India; one to explain and define it, under a supposition, that the Legislature has always regarded the King's Court as having general jurisdiction, with regard to British subjects, but with regard to natives, a jurisdiction limited according to classes and locality; the other to amalgamate the King's Courts with the Provincial Courts of Judicature, in the case of its being deemed expedient to abolish the existence of separate and independent jurisdictions for different classes of subjects.

With reference to the first of these suppositions, the jurisdiction of the King's Court regarding British subjects, as at present understood, does not absolutely need alteration. They are liable universally to both civil and criminal jurisdiction. Only, as to acts committed in the territories of Native Princes, it ought to be declared, in order to prevent the recurrence of such a claim as was once set up by the Madras Court, that the Courts " have no legal authority to cause writs or pro- " cess of any kind, issued against European born British subjects, or natives of " the British territories in the service of the East India Company, to be executed " by arrest of persons, seizure of property, or any other compulsory method within " the dominions of Natives Princes in alliance with the British Government in " India." This was the opinion given by His Majesty's Attorney General (the late Lord Gifford), His Majesty's Solicitor General (the present Lord Chancellor), and the Honourable Company's Solicitor, Mr. Bosanquet, when called on in consequence of the Madras Court.

The jurisdiction as to natives in the Company's service seems sufficiently defined, and may remain as it is. It is hard on natives in the Company's service, that they should be amenable to two independent jurisdictions, and not obviously necessary; but as the Legislature has declared them to be subject to the jurisdiction of the King's Court, under certain limitations as to civil suits, the case is clear, and the exercise of the power is not open to dispute.

With respect also to natives in civil actions, regarding transactions in which they have bound themselves to be amenable to the Court, there is no room to doubt.

But

But it will be necessary to define more clearly the jurisdiction over the natives, inhabitants of Calcutta, Madras and Bombay, that is, over natives residing within the limits of the local jurisdiction of the Court at each Presidency.

Actual inhabitants within those limits must of course be considered fully amenable in both civil and criminal matters, with the privileges nevertheless, as to their own laws and usages, provided by the enactments of the Legislature and the Charters of the Courts.

Persons residing elsewhere, who may formerly have resided within the local limits, must be amenable for acts committed during their residence within the limits, but ought not to be so for acts committed within the jurisdiction of the Provincial Courts, or elsewhere beyond the limits of the Royal Court's jurisdiction.

Persons who have never resided within the limits ought not to be liable to arrest, nor generally amenable to the Court's jurisdiction, on the plea of being inhabitants, on account of transactions of a pecuniary nature within the limits in which they may be said to have been concerned. Nevertheless, for pecuniary transactions on their behalf within the limits, any property within the limits, which such persons may possess, ought to be liable; due notice being given of any suit, in order that the party concerned may answer to it at his option, or allow it to be decided on the evidence of the plaintiff. But property beyond the limits ought not, I conceive, in such cases to be liable to the Court's jurisdiction; it being, nevertheless, liable to the jurisdiction of the provinces in which it may be situated, for transactions within the jurisdiction of the King's Court.

The liability of persons and property, with respect to jurisdiction, ought generally, I conceive, to be determined by residence and locality. The course sometimes pursued by the King's Court would set such a consideration at defiance. We have seen, as before mentioned, a man arrested as an inhabitant of Calcutta, at a distance of seven or eight hundred miles, who never, perhaps, had been much nearer, and certainly never had been an inhabitant, for a matter of some curiosity sent to him from Calcutta by the party who caused and superintended his arrest, on the plea that he was an inhabitant of Calcutta, in consequence of having property, and employing agents in commercial dealings. It seems absolutely necessary that our native subjects should be protected against such proceedings; for which purpose I have proposed the restrictions above stated.

With respect to the property of persons, British subjects or others, by law fully amenable to the King's Court, their property, wherever situated within the British territories, must, I conclude, be liable; but the process of the Court regarding such property ought not to be executed by its own officers, but by the local Magistrate; and rules ought to be made to preclude the officers of the King's Court from proceeding beyond its local limits, and to make the local Magistrates its instruments for carrying into effect its lawful orders, regarding persons or property liable to its jurisdiction, although residing or situated beyond the local limits thereof. The sending of the officers of the King's Court into districts where there is another jurisdiction, is useless in itself, and attended with considerable inconvenience and mischief, by causing the appearance of a double jurisdiction.

No native ought to be dragged from a distance to show whether he is or is not liable to the jurisdiction of the King's Court. It is a grievous oppression that persons not subject to the jurisdiction may be arrested and brought before the Court from any distance before they can show that they are not amenable. This evil might be remedied by making the local Magistrate in each district the channel of executing the Court's writs, and by giving him power to submit the excuses of any native denying the jurisdiction, and to try and report on the question of jurisdiction on the spot, under the Court's orders, abiding, nevertheless, by the Court's decision on his report.

The decrees or writs of the King's Court ought not, beyond its own local jurisdiction, to interfere with the previous decrees of the Provincial or District Court of any other local jurisdiction; as such interference must have the effect of bringing the local jurisdiction, and the authority from which it emanates, into contempt. Of course, no decrees of the local jurisdiction can set aside those of the King's Court previously issued, if directed against persons legally amenable.

It ought to be the duty of local authorities to bring to the notice of Government any instance within their jurisdiction of act of encroachment by the King's Court beyond its known and acknowledged powers. The Government, if it entertain the same opinion, ought to have the power of calling the attention of the King's Court to the subject, either through the Advocate General or some other channel. The

V. Legislative Councils; Courts of Justice; Code of Laws.

Court ought to be bound to listen to the reference, and explain the grounds of its proceedings; and if the Government should notwithstanding remain convinced of the illegality of the supposed extension of the Court's powers, it ought to have the right to appeal to The King in Council, or other competent tribunal, and in a case which it may judge to be of sufficient importance, the power of arresting the progress of the encroachment pending the result of the appeal.

The powers recently claimed by the King's Court at Bombay, but more generally supposed not to have been intended by the Legislature, ought to be distinctly denied, and a clear definition made of all the powers to be exercised and enjoyed by the King's Court.

The rules and provisions herein proposed, would, I trust, afford that protection to our native subjects which we are bound to give them against uncertainty of jurisdiction and undefined extension of the powers of Courts to which they are not supposed to be amenable.

There is another portion of our subjects, partly of European and partly of Asiatic extraction, commonly called East Indians, whose situation is peculiar. The law regards them as natives; but in religion, education, language and habits, they assimilate with British subjects.

At present the East Indians are, as natives, subject to the jurisdiction within the limits of which they reside. With regard to civil suits and minor criminal offences, not subject to severe or lengthened punishment, this arrangement seems unobjectionable; but with regard to capital crimes, or such as are liable to exemplary punishment, I am of opinion that they ought to be put on the same footing as British subjects; and to prevent confusion, this might be done generally as to criminal jurisdiction.

The criminal law in force in our provincial judicature, although modified by our regulations, is mainly Mahometan. That Christian Judges should try Hindoo prisoners according to Mahometan law, seems sufficiently absurd; but that Christian Judges of British blood should try Christians of British extraction by Mahometan law, seems, if possible, still more strange; and therefore I think that it would be better if East Indians, as to criminal jurisdiction, were put on the footing of British subjects.

I am also of opinion, that for property situated beyond the limits of the local jurisdiction of the King's Court, British subjects ought to be liable in civil suits to the jurisdiction of the Courts of Judicature established in the provinces, with regard to transactions committed within that jurisdiction, without any impediment to their full subjection to the jurisdiction of the King's Court. In other words, that all property and transactions should be liable to the jurisdiction within which they may be situated or performed.

I have said all that at present occurs to me, regarding the regulations of that state of jurisdiction in India, as to the King's Courts, which is at present supposed to exist, according to the provisions of the Legislature. I now proceed to advert to the supposition of a change, by which the judicature of India, instead of being divided into separate and independent jurisdictions, might be amalgamated in one.

Such a change, when judged fit, it will be best to introduce gradually.

The connection between the two jurisdictions might in the first instance be established by making His Majesty's Supreme Court at each Presidency the highest Court in civil and criminal judicature for all the territories of such Presidency; that is, what the Sudder Dewanny and Nizamut Adawlut is now.

In that case, the Sudder Adawlut at each Presidency might be abolished; and its judicial duties transferred to the Supreme Court, with such modifications as might be requisite.

It would then be proper that the selection of Judges for the Supreme Court should be partly, as at present, from barristers of the English, Irish, or Indian bar, and partly from Judges practised in the judicature of India, and acquainted with the language, laws, and usages of the natives.

It is surprising that a knowledge of any language spoken by the natives has never been considered a necessary qualification for a Judge on the bench of a King's Court in India. There has consequently scarcely ever been an instance of its being in the power of a Judge to understand what is said by the native witnesses and prisoners; and this defect generally extends to the barristers and officers of the Court, as well as to the Judges.

Supposing a Supreme Court to be constituted as above suggested, much of the duties which the King's Court has now to perform, might be transferred to an

inferior Court at each Presidency, the more important duties being retained in the Supreme Court.

The jurisdiction and powers of the Supreme Court might be exercised every where through local Courts and authorities.

At first the local Courts would have no more power or jurisdiction over British subjects than they possess at present; but as occasion might arise, from time to time, for extending their powers, authority ought to be vested in the Supreme Government in concert with the Supreme Court, under the control of the Legislature, for conferring such powers as might be necessary for the due administration of justice, and for modifying and regulating the jurisdiction, practice and proceedings of these Courts, as might be most expedient, securing to British subjects, as much as possible, the enjoyment of their own laws, and always the right of trial by jury in criminal cases, and extending the same right to native subjects as soon as it could be done with the prospect of benefit; securing to them also their own laws and usages; and when, in contention between two parties of different persuasions, any doubtful point should turn on the difference of laws, the preference might be given to those of the defendant.

It would be presumptuous in me to attempt to describe all the subsidiary alterations that might, in process of time, follow the change proposed. All that I aim at is, to convey the impression that such a change, if ever deemed desirable, might be effected by a gradual introduction of improvement, without the convulsive destruction of that system of judicature to which our native subjects are accustomed.

I proposed to record this Minute in the Secret Department, on account of the delicate nature of the discussion which it embraces.

Its main purpose is to invite attention to the necessity of defining distinctly the powers to be exercised by the King's Courts with regard to native subjects, and of vesting in some authority in India, power to prevent the occurrence or stop the progress of any dispute, on a doubtful question, between the Governments and the Courts at the several Presidencies, pending a reference to England for final decision.

15 April 1829. (signed) *C. T. Metcalfe.*

—No. 9.—

(Secret Department.)

MINUTE by the Honourable *C. T. Metcalfe*; dated 2 May 1829.

THE immediate cause of the difference between the Government of Bombay and His Majesty's Court of Judicature at that Presidency has been the issuing of certain writs of *habeas corpus*.

The writ in one case was addressed to persons in the service of the Company, and therefore subject to the Court's jurisdiction. In another case to a native, not liable to the jurisdiction, according to the belief hitherto generally entertained.

This difference between the writs has not influenced the proceedings either of the Government or of the Court of Bombay.

The Government has rested its opposition on political grounds, without reference to the comparative legality of the Court's proceedings in the two cases.

The Court, on the other hand, has declared that it derives its power equally, in both cases, from the same clause of its Charter, and that if it does not possess the power in both cases, it does not in either.

To those, however, who believe that the grant of the powers of the Court of King's Bench is with reference to the limitations imposed on jurisdiction, and not independent thereof, there must appear a considerable difference between the two writs.

In this view of the case, a writ of *habeas corpus*, addressed to any person, Native or European, in the Company's service, must seem to be legal, and within the competence of the Court, however inconvenient and mischievous its operation may be, while a similar writ addressed to a native not subject to the ordinary jurisdiction must be considered illegal, and of course beyond the Court's power.

With regard to the last species of jurisdiction claimed now, it is supposed for the first time, I have ventured before to observe, that its existence is incompatible with the preservation of that separate jurisdiction of the Company's Courts which has hitherto prevailed without question, and that it would be extremely unjust to subject

V. Legislative Councils; Courts of Justice; Code of Laws.

the natives to two jurisdictions and two codes of laws. Unless, therefore, it be intended to establish the King's Court universally and exclusively, the extended jurisdiction now asserted ought to be prohibited by the Legislature.

My present object in adding a few remarks to my former Minute, is to bring under consideration the necessity of regulating the exercise of the power supposed to reside in the King's Courts, of issuing writs of *habeas corpus* addressed to persons liable to the jurisdiction, when that power is exercised in behalf of the convicts duly tried and condemned in the Company's Courts, or of state prisoners detained for the public safety.

The Legislature cannot have intended that the King's Courts should throw open all the provincial gaols, and release all the prisoners sentenced by the Company's Courts; and it is quite clear that the exercise of such a power would effectually destroy good order in the Company's territories, and render its Courts utterly useless and contemptible.

Admitting that the King's Courts do possess the power of issuing writs of *habeas corpus* to persons liable to their jurisdiction, as no provision has been made for securing the jurisdiction of the Company's Courts against violation by that process, it is fair to conclude, that the possibility of such a collision has been overlooked by the Legislature.

The proceedings of His Majesty's Court of Bombay have now shown that it is necessary to guard against this evil.

The remedy is simple and easy. It is only necessary to declare on the part of the Legislature, that a statement describing the prisoners as duly convicted after trial, or as detained for trial by the Court to whose jurisdiction they are liable, shall be good and sufficient return to a writ issued under such circumstances.

The same power which the Court at Bombay has exercised with regard to convicted criminals might be assumed; I know nothing to prevent it with respect to state prisoners; yet it is impossible that the Government, responsible for the public safety, could allow its state prisoners to be released. Supposing, therefore, a writ to be issued for bringing up the body of a state prisoner, a statement setting forth that he is confined as a state prisoner by order of the Government ought to be declared a sufficient return; and unless this be done, it seems most probable that a dispute will some day break out between the Government and the Court, in consequence of a writ of *habeas corpus* to release a state prisoner.

This is a method recently brought to notice, by which the jurisdiction of the King's Courts is extended, contrary to the evident intentions of the Legislature, and with grievous injury to native subjects not properly liable to their jurisdiction.

It consists in this: if a native succeeds to property within the Court's jurisdiction, to which he has never before been liable, he must take out a probate from the Court in order to enable him to obtain possession. So far is unobjectionable; but by so doing, he is made liable to the Court's jurisdiction, not with regard to that property alone, which would be right and just, but with regard to all property, wherever situated, although many hundred miles beyond the Court's jurisdiction.

This is the law as laid down by the Court at Madras.

The story of the Nawaub of Masulipatam is a sample of its practical effect. The Nawaub of Masulipatam and his family, residing 200 miles or more from Madras, were exempt from the jurisdiction of the King's Court. The old Nawaub died, leaving, besides his property situated beyond the Court's jurisdiction, a sum in the Company's Funds, which being within the jurisdiction could not be paid to any of his heirs without probate from the Court. This was taken out by the eldest son, the present Nawaub, who in consequence became fully liable to the jurisdiction. Various suits have been entered against him. They are not determined; but he is already ruined, and unable to pay the expenses of a tribunal into which he has been dragged without being conscious of his liability.

It is thus that the extension of the jurisdiction of the King's Court in India goes on increasing by the mere will of the Judges, without regard to the right and interests of our native subjects, whom it was manifestly the intention of the Legislature to exempt from that jurisdiction.

The remedy in cases of this kind seems obvious, and without difficulty. It is only to declare by a legislative enactment, that native subjects not liable to the jurisdiction of the King's Court, shall not become so in consequence of taking out a probate, except for that property alone for which they have recourse unavoidably to the Court's jurisdiction.

2 May 1829. (signed) *C. T. Metcalfe.*

— No. 10. —

NOTE by Mr. *Holt Mackenzie.*

THE apprehensions of inconvenience from the interference of the Supreme Court with landed property in the interior of the country, seem to me to be somewhat exaggerated; and in the cases which have occurred, the trouble experienced would, I think, have been for the most part avoided, had the officers concerned possessed the information which a short experience will doubtless give. Still it seems to be certain, that without a complete and well-regulated concurrence of the two authorities, considerable inconvenience may be experienced; and if our officers have much to amend before their proceedings can secure the approval of men accustomed to the law of England, or can satisfy the just expectations of the people of India, it seems to be almost equally certain, that the King's Courts must be prepared to modify their forms and process with a liberal consideration of local peculiarities, if they would really render the extension of their jurisdiction a benefit to the country. Indeed, even in England the necessity of pretty extensive changes seems now to be generally recognized; and here we have of course none of those prepossessions in favour of the institutions of our country, which may there render it unadvisable to discard ancient usages, even when opposed to reason. We may be pretty sure that the prejudices of the people against any rules borrowed from the English code (if I may use a word which rather reminds us of what we have not, than describes what we have,) will be vanquished with facility in proportion as that which we desire to introduce bears the character of simplicity and truth.

The time seems to be favourable for the attempt to amend what is inconvenient, to remove what is dangerous, and to reconcile what is discordant; since the Parliament of England must be prepared for change, and the Bench is so filled as to give the best promise that all necessary and expedient changes will be ably and cordially promoted.

I understand it to be clear, that the Supreme Court has jurisdiction over immoveable property in the interior of the country, in all cases in which the possessor of such property is personally subject to its jurisdiction. Its interference with such property is therefore likely to be considerably more extensive hereafter than it has been hitherto.

Let us then see how it will operate: First, as to land charged with a land revenue, or rent to Government.

Such land is liable to sale by the Revenue authorities, on any failure to pay the assessed revenue with punctuality. The holders of it are subject to various rules in regard to the appointment of the inferior agents of police, and of certain village officers of account. They are bound to render information on various occasions; they are required to aid in furnishing supplies to troops, and are liable to fines in default. Every zemindaree, or other fiscal division, for the rent or revenue of which a separate contract was entered into at the time of the permanent settlement, continues to be responsible for the whole of such revenue, until a regular division and apportionment are made, according to prescribed forms; provision being at the same time made to secure persons who have applied to have separate possession of their shares, from suffering by the default of their co-sharers pending the process of partition.

Where distinct parcels of a property thus held of Government under a single lease are transferred, whether by decree of Court or by the act of individuals, the thing to be done is merely to determine what share of the aggregate sum annually payable to Government shall be charged to each parcel. Where the property of the co-sharers is joint, a partition involves the double process of distributing the parcels of land, and apportioning to each its due share of the Revenue with which the whole is burthened.

In all cases the decision of the question how the Government demand shall be apportioned, rests with the Revenue authorities; the reservation forming in the Lower Provinces a condition of the permanent settlement under which the Government compounded for its right of levying, as rent or revenue, a certain portion of the produce of every beegah not especially exempted. The law proceeds on the assumption that the interests of Government require the reserved revenue or rent to be equally apportioned, and that the Revenue authorities are best able to effect

V. Legislative Councils; Courts of Justice; Code of Laws.

the object. And as the Courts of Adawlut had originally no jurisdiction in the matter of assessment, so they are still barred from taking cognizance of any question touching the apportionment of the assessed demand, to the several parcels into which a joint estate may be divided, or to each of several estates which by the permanent settlement were made subject to a common rent, but for which distinct engagements are now desired.

These Letters are referred to (A.) by Mr. Ross.

It appears to be essential, that the officers of the Supreme Court, or the Receivers appointed by it, should attend to the above particulars.

There is otherwise considerable danger that the practical effect of orders intended to secure equal advantages to litigants may operate very differently, and that misapprehensions of our system may induce the penalty of public sale, to the great loss of the individuals whose interests it is desired to guard. For I do not suppose that any proceeding of the Supreme Court, or any other Court, in suits between individuals, can effect the process prescribed by Government for the realization of its reserved Revenue. And though the difficulties in which families are sometimes involved on the demise of their head, or by the dissensions of their members, ought not to be overlooked by our officers, even when the Government demand may be most light, still the exigencies of the public service must not be neglected.

I am not sure how far the subordinate tenantry are affected when the owner of landed property in the interior becomes a ward of the Supreme Court, when a receiver is appointed, or when such property is sequestrated, or any process had implying the actual transfer of possession; but I presume that the Master in Equity, as well as persons (Natives or Europeans) acting under his authority, are only subject to the jurisdiction of the Court whose officer he is. And possibly in all cases in which the process goes actually to give or disturb possession, the Court would claim jurisdiction over those whom it must regard as the tenants of the parties whose interests have been adjudged by it. Now, when we consider how hopeless it must be for a set of poor and ignorant cultivators to seek redress in that tribunal, the inconvenience of such a state of things must be admitted to be no slight evil. Still more if we recollect that of the tenantry of a Zemindar a great proportion will be found holding, not in virtue of any contract with that person, but by a tenure independent of his will, subject to the payment merely of the Revenue, which, but for its settlement, the Government would have been entitled to demand, and that consisting in many cases of a fixed money-rate, and still leaving to the cultivator a property more valuable than that of his superior. It seems to be a cruel injustice upon such persons, that any act or incident done by or affecting the man who happens to farm the Revenue payable by them, though under a perpetual lease, should operate to deprive them, without their consent, of recourse for redress to the Court of this district.

The underwritten opinion of Mr. Strettell (if I understand it rightly) seems to convey this:

The Master in Chancery is only amenable to the Supreme Court for acts done by his order by farmers and agents in charge of the lands of wards of the Supreme Court. Such farmers and agents are, however, liable to the jurisdiction of the Mofussil Courts, unless they can prove an authority from the Master.

Strettell.

21st Dec. 1812.

Mr. Lewin is not in any manner subject to the jurisdiction of your Court, and cannot be proceeded against in it. I showed the Petition to him, and he says he knows nothing about the transaction, and supposes it arises from some misconduct of the persons complained against, or their Master.

If they cannot show a proper authority for what they have done, they will of course be liable to your Court's decision against them; but if an authority from Mr. Lewin should appear, I think the application should be against him in the Supreme Court.

Then, if it be lawful for our Country Courts to give to *A.*, in a suit with *B.*, property which the Supreme Court has given to *C.* in a contest with *D.*, the poor ryots may, without a clear understanding between the tribunals, be subjected to two task masters.

Lands exempted from the payment of Revenue are free from those causes of embarrassment which have their source in the rules prescribed for the security and punctual realization of the assessed demand of Government. But in other respects the same difficulties arise. And further, the question may occur, how, when such lands are occupied by an officer of the Supreme Court, or by a receiver appointed by it, the eventual claims of Government to the alienated Revenue, supposing the title of exemption invalid, are to be determined. So also as to the assessment of lands held under temporary settlements by the owners.

(B.) The simplest preventative and remedy of the inconvenience to be apprehended from the above causes, would seem to be the following. In all cases in which the Supreme Court assume the management of any landed property in the interior through the Master or other officer, or constitute a receiver of the rents of such property,

property, the Collector of the district should be appointed to that office; and besides being answerable to the Supreme Court, he should likewise be subject to the local tribunals, in the same way as he would be if ordered to attach an estate by any of the Adawluts. If thought advisea- ble, the appeal may in such cases lie to the Supreme Court; for of the appellate jurisdiction of that Court, whether over Judges or Magistrates, or of the exercise of its powers in controlling and directing the European officers of Government, there is not, I think, any reasonable ground for jealousy. For one, at least, I should be glad to see their authority in such cases more frequently and extensively brought into action, though I might add the condition, that their process should be made simpler and less expensive; and I have little doubt that our judicial tribunals might be very much improved by placing the Supreme Court at their head, under laws which should combine the whole into one harmonious system.

Though managing the estate, he might, of course, if thought necessary, account for and remit the rents to the Master, or any Receiver appointed by the Court.

In cases in which the Supreme Court may actually give possession to any individual, all that seems to be necessary is, that in respect to all suits by or against persons, other than the party against whom the process of that Court may have issued, or the agents or assignees of such party, the individual put in possession shall stand on the same footing as if he had acquired possession by a decree of the Adawlut; barring, of course, any questions touching the force of the Supreme Court's judgment or order in respect to the parties named in their writ.

The defect of the provision contained in the 107th section of the 53d of the late King, c. 155, which appears to have been held not to permit one British born subject to be impleaded by another in the Country Courts, and under which it seems to be doubtful whether an executor is subject to the jurisdiction of these Courts, except for his own contracts, ought to be amended.

As to possible collision between the Courts in cases in which they have concurrent jurisdiction, I do not think the danger of serious evil is very great. Still it does seem to be a source of inconvenience that should be shut. But this can apparently be effected only in one of two ways. Either the Supreme Court should (which will never be) cease to have jurisdiction over immovable property in the interior, or, instead of standing, as it now does, alone, it must be made part of the general scheme for the administration of the judicial business of the country.

How the last alternative is best to be carried into effect, it would be impertinent in me to attempt to decide. My thoughts on the subject must necessarily be vague and little worth. But it may help to an understanding of the thing if I briefly put the cases that have occurred to me.

It has happened that opposite decisions have been passed by the Supreme Court and by the Sudder Dewanny Adawlut, regarding different portions of the same estate, on grounds equally applicable to all. In the case I have immediately in view there was no collision, and it happened that the value of the thing in contest was such as to give an appeal from the judgment of both Courts to The King in Council. Even in such a case, however, it is rather discreditable, considering especially the fearful delay that seems to attend appeals to England, to have the highest tribunals of the country placed in such a predicament. The strength of our Government resting so much on our real or supposed concord, nothing is more to be deprecated than even the appearance of dissension. And it should be observed, that the circumstance of there being an appeal to England was accidental.

I see a case mentioned, in which a British subject, *A.*, having got possession of part of an estate, while a native, *B.*, had seized the rest; the former was impleaded by the latter in the Supreme Court, the latter by the former in the Zillah Court, each in his own forum, without any assurance of consistency of decision.

The next case that occurs to me was that of a person holding possession under a decree of the Zillah Court being ousted by an order of the Supreme Court passed *ex parte*; the possessor having failed to appear and plead the decree under which he held.

We lately saw a case in which a native of rank would, but for the illegal interference of the local officers, have been dragged nearly a thousand miles down to Calcutta, to contest a demand of an inconsiderable sum of money, which, if due, could easily have been recovered on the spot, and for which security ten times over would readily have been given.

The jurisdiction asserted by the Bombay Court appears to leave little exempt from it.

It seems to be somewhat questionable whether false swearing in the Sudder Dewanny and Nizamut Adawlut would be punishable as perjury by the Supreme

V. Legislative Councils; Courts of Justice; Code of Laws.

Court; and it seems to be clear that oaths are frequently taken judicially, and on the most material points at issue, which would not be punished.

The power given to the Sudder Court of enforcing process within the limits of Calcutta has, in numerous cases, been found to be insufficient.

(F.) The criminal jurisdiction of the Country Courts over British subjects being confined to cases of assault and trespass, is manifestly inadequate to the exigencies that must arise under an extended resort of British subjects to the interior, to say nothing of difficulties arising out of the mere wording of the provisions applicable to the case.

In the distant provinces many offences indeed must remain unpunished, rather than the offenders, the complainants, and the witnesses, be transmitted many hundred miles to an uncongenial climate; and Justices of the Peace, who as zillah or city Magistrates exercise all their powers under the control of the Circuit Judges, are, in that capacity, freed from any control but that of the Supreme Court.

Now, as to persons, supposing the Supreme Court to retain its original cognizance of all suits now cognizable by it, would it not be practicable to define its jurisdiction by a system of registry, partly imperative, partly optional, so that every one should know precisely whether he stood in that predicament; and that the Judges and officers of the Supreme Court might likewise know whether their writs could properly be issued against the parties named in them?

If this cannot be done, may not our Mofussil Courts be most advantageously employed by the Supreme Court as Commissioners of Inquiry and Mesne Process and Execution, with the power of investigating the facts necessary to determine the point (it would be no serious evil if now and then the jurisdiction were disallowed erroneously), and with authority to take bail, and to do all that is necessary to insure an appearance, and the execution of the ultimate decree?

To a native, ignorant of our ways, filled possibly with groundless terrors of a strange tribunal (let us not flatter ourselves that there is no reason for so general a dread), justly alarmed at the prospect of being transported to a country of which the people are h.....,* the climate noxious, the food unwholesome, the very water tainted (so Bengal presents itself to many of the inhabitants of Hindoostan), it is no small evil that the question of jurisdiction cannot be determined by some such process, and that he is liable to be suddenly called to answer in a distant tribunal, of whose existence he may then first have heard, and whose process is full of mystery and affright. Might not the Magistrate of each city or zillah be the Sheriff of the same, with enlarged powers and discretion, if we must have a Sheriff?

* *Original torn.*

Without some such scheme, it seems to be impossible but that natives must be frequently surprised, and the process of the Supreme Court may, through the chicanery of the Bengalese, be rendered a source of intolerable oppression.

It seems to me, that in all cases wherein the party impleaded may not be an European born British subject or a settled resident of Calcutta (these classes could easily be defined), the question of jurisdiction should be taken up by the Court without any pleading of the party; he being, of course, still at liberty to plead that process should not issue out of Calcutta, unless the plaintiff's evidence (supposing it not to be contradicted) establish the fact, and that when issued it should be directed to the Judge or Magistrate of the district empowered as above to take security under the directions of the Supreme Court.

(H.) In suits for land, all process should, I think, be served through the local Courts, who might, perhaps with advantage, be required to make a return of any decrees or orders that might have been passed relative to the property in contest, touching either the complainant or defendant. Nothing is to be watched so jealously as *ex parte* decisions; for it seems to be certain, that in this country it will never do for Justice blindly to hold the scales, in the confidence that each party will throw nto them every thing that can weigh in his favour.

Such a principle may be safe and wise in England, because we have there freedom and knowledge, community of language, publicity of proceedings, the fellowship of man with man, the thousand social ties that link a population accustomed to self-government, and knit together by the institutions through which the work of government is done; but if laws written in monkish Latin or barbarous French were administered to Saxon serfs by their Norman conquerors, nay, where an English Court is carried among Highlanders, or Irishmen, Judges must, I apprehend, have all their eyes about them, unless they be content that the forms of law shall cover the most shocking injustice.

(I.) In cases where there is a concurrent jurisdiction, would it be impossible or difficult to constitute a special Court or Chamber for the final decision of them, subject, if thought proper, to an appeal to England? Might not two Sudder Judges

be

be in such case associated with the Supreme Court? or might the Chief Justice and one of the Puisne Judges of that Court, with a single Judge of the Sudder, constitute a suitable tribunal, using in all cases, at least as extensively as possible, the District Court for the first trial of the points at issue?

We should thus apparently guard against collision and contradiction; we should unite the local knowledge of our service with the legal wisdom of the King's Judges. The latter might gain something in the way of information; the former could not fail to derive much valuable instruction.

(K.)

As to the punishment of offences committed by British subjects in the interior of the country, the main difficulty probably would be the reluctance of our countrymen here and at home to give up the privilege of trial by jury. It would not however, I imagine, be very difficult to constitute a Jury, say of four or five persons, at each of the principal towns (Meerut, Dehlie, Agra, Furruckabad, Bareilly, Allahabad, Benares, Patna, Moorshedabad, Dacra, Chittagong), and three Judges or Justices of the Peace might assemble to hold the Sessions.

To that Sessions there might lie an appeal from sentences passed by single Justices of Peace, and in the most serious cases there might be an appeal from the Sessions to the Supreme Court; that Court, with or without a Jury, to be vested with the power of confirming or reversing convictions, and in the case of acquittals, of annulling the proceeding of the Sessions, and either ordering a new trial, or directing the parties to be sent for trial to Calcutta.

I suppose there would be little difficulty in obtaining from Parliament authority for the Governor General in Council, with the concurrence of the Supreme Court, to make the necessary provisions for the enforcement of the process of all our Courts in Calcutta or elsewhere, and for enabling all Boards and Commissions acting judicially under the warrant of the Government, in cases within their competence, to restrain contempts by moderate fines, and to bring to punishment, by indictment in the Supreme Court, persons guilty of swearing falsely before them to matters essential to the issue of the cases so investigated by them.

(L.)

Whether Parliament would consent to give to Government a general power of legislation, is more doubtful; yet assuredly it is a little unreasonable that the Government should possess and exercise so large a power of legislating for many millions of natives, (I do not deny that the function is somewhat too easily exercised,) and that so much difficulty should exist in providing the laws necessary for the small number of British born subjects resident in India, and the comparatively limited population of Calcutta.

It would not, I think, be difficult to constitute a suitable Legislative Council, if it be not thought right to give the power to Government. A veto, I suppose, will at once be allowed to the Governor General. In such a Council the Judges of the Supreme Court ought surely to take a part; for their co-operation would in many respects be eminently useful; and it does not appear to me that any of the reasons which may be urged against the union of judicial and legislative powers, possess much force under the actual circumstances of this country.

But I have already written more than enough in a paper, of which the object is to bring out the points requiring to be settled, rather than to attempt to describe the means of settling them. I shall only therefore observe generally, that the number* and nature of questions which have arisen out of the Parliamentary provisions relating to this country, and the doubts and difficulties which have practically embarrassed the Government, are such as appear conclusively to show the necessity of there being vested in some local authority legislative powers similar to those enjoyed in many of the Colonies. In truth, perhaps no appeal to facts can in such a case be necessary. It is enough to observe, that even in cases in which Parliament legislates with the fullest information, almost every new provision induces the necessity of some fresh enactment to amend or explain, to admit, that in relation to this country it must generally proceed on very imperfect information, and to recollect the distance and delay that impede the correction of what is wrong, or the explanation of what is doubtful.

* *See* especially Correspondence regarding the Mutiny Act, the Navigation Laws, the Slave Trade Act, the Revenue Powers of Government, the Marriage Act, and I might, I believe, say every Act relating to the country.

The following points requiring to be settled occur to me, in addition to what I have above stated; many others might, I imagine, be added:—Relation of the Government to the foreign Settlements in peace, or when captured in war; Law of Inheritance for country-born Christians of various parentage; Modification of Hindoo and Moslem Laws, as applicable to Calcutta; Recovery of Small Debts from European British subjects living in the Mofussil, within ten miles of Calcutta; Nature of the interest possessed by British subjects in various kinds of immovable property; Administration to Estates of Hindoos and Moslems residing in Calcutta; Execution of Decrees passed by the Country Courts, and of Process generally within Calcutta; Exemplification of ditto; Enforcement of Security Bonds and the like, given by British born subjects in suits before the Country Courts; Examination of Witnesses at a distance, on the principles of 13 Geo. III. c. 63. s. 40, &c.; 24 Geo. III. c. 25. s. 78.

320. E.

(signed) *Holt Makenzie.*

—No. 11.—

V. Legislative Councils; Courts of Justice; Code of Laws.

NOTE by Mr. *W. H. Macnaghten*; dated 9 April 1829.

I HAVE read with much attention Mr. Mackenzie's Minute relative to the jurisdiction of the King's and Company's Courts. The question now under the consideration of Government originated, I believe, in the appointment by the Supreme Court of a Receiver to a portion of an estate situated in Nuddea, and other districts, which portion had been decreed by that authority to be the property of two individuals, one of whom is a minor. The Receiver so appointed was an European British subject; and the Judge of Nuddea, entertaining doubts as to the legality of the appointment, referred the question to the Sudder Dewanny Adawlut, by which Court it was submitted to Government. The Governor General in Council having determined the rule which restricts Europeans from holding lands or managing estates in the Mofussil, ought not to be considered applicable to a Receiver appointed by the Supreme Court, the original question is set at rest; but others have arisen out of it which have been discussed by Mr. Mackenzie, and which I shall here briefly notice.

In the first place, an apprehension seems to be entertained, that the extension of the Supreme Court's jurisdiction to landed property situated in the Mofussil is calculated to have an injurious effect on the Revenue of the State. But how this effect is to be produced from such a cause I cannot perceive. Take the case we have before us. The property under litigation in the Supreme Court we will suppose to have been a joint estate, belonging to Ruttenchunder Paul Chowdry and Premchunder Paul Chowdry. Subsequently to the death of these two individuals, the heirs of one of them attempt to take possession of the entire property. They are sued by the heirs of the other in the Supreme Court, and the plaintiffs obtain a decree for a six Anna share. The lands of which that six Anna share is to consist are specified in the decree; and an order is passed, that they shall be held by the plaintiffs as a separate estate. In this there is no attempt at interference with the fiscal authorities or the Revenue dues of Government. The Receiver of the Supreme Court, on behalf of those for whom he collects, applies to the proper quarter for a registry of the names of the decree holders, with a view to give effect to the provisions of the judgment. The act of the Court in distributing the parcels of land among the co-sharers, neither does nor is intended to affect the clear and indefeasible right of Government to realize by the authorized process the rent leviable on the entire estate.

In the event of any arrears accruing on either of the portions specified in the decree, the estate is of course liable to sale; and this, indeed, seems to have been actually threatened with regard to certain parts of the estate situated in the districts of Jefsore and Nuddea. The only means by which the Government Revenue could be affected, would be by a depreciation of property occasioned by the assignment to one co-sharer of too great a portion with reference to the share of Government Revenue contributed by him. But this evil would soon cure itself. The suffering co-sharer would, it may be supposed, not delay long in applying for a butwarra of the estate; and on a division being made, the Collector is authorized and required to assess the parcel divided off with its due share of the revenue with which the whole estate is burthened. If there is any inequality in the assessment, the fault does not lie with the Supreme Court. But there might be cases in which, from minority or other disqualification, mischief might arise from the least delay in the application of the remedy; for this reason, and because it seems to me a plan in itself simple, efficacious and unobjectionable, I think that a rule should be made, that whenever the Supreme Court decree a portion of an estate, and actually parcel it off, as in the present instance, the division should be looked upon, to all intents and purposes, as if it were a butwarra made by the Collector, and that the assessment should be laid on the several portions accordingly. The Supreme Court would, I feel convinced, readily give the necessary instructions to their officer to furnish the Sudder Board with copies of all their decrees affecting landed property situated in the Mofussil; and when a Receiver is appointed, he should be required to name the individual or individuals whom he may delegate to make the collections.

The next difficulty started seems to me to exist nowhere but in imagination. It is apprehended that the individual delegated by the Receiver to collect the rents would be amenable only to the jurisdiction of the Supreme Court. But why should this be the case? The Supreme Court, in appointing a Receiver, never contemplated that his delegate should be "*lege solutus*," or exempt from responsibility to the local authorities. Suppose that the parties in whose favour the

the decree had been passed were neither of them disqualified, and that the Supreme Court had adjudged possession to them; in that case it would not be pretended, that the judgment was meant to exempt the parties from any liabilities to which they were subject before; neither in this case, by the appointment of a Receiver to act for the parties, was anything more contemplated than that he should be guided in his proceedings by the same rules as are applicable to the parties themselves. The Supreme Court would no more interfere in the one case than in the other. If the officers of their Receiver misconduct themselves in the interior, either by commission or omission, that Court would unquestionably allow the local law to take its course in the same way as if the parties themselves had been put in possession under the decree. I happen to know, that very lately, within the jurisdiction of Baraset, several people belonging to the Receiver's delegate were seized and put in gaol on a charge of affray; but the Receiver never dreamt of applying to the Supreme Court, nor supposed that the jurisdiction of the Mofussil authorities could for a moment be disputed. Had the Receiver appointed an European British subject to collect the rents, the case would have been different. This we may be assured he would never do for his own sake; and if this were done, the Government would always be able to counteract the evil by refusing a license to reside, in the event of security not being furnished for the performance of all that is required from the land-holders.

The entire fallacy seems to consist in the supposition, that the Supreme Court, in adjudicating the transfer of property situated in the Mofussil, necessarily alters the laws to which such property is subject, and that, in appointing an officer of their own to receive the rents, they necessarily authorize a deviation from the established modes of collection. I feel it quite impossible to argue against this doctrine, or to suggest any remedy for an evil the existence of which there is no reason to presume. The question, as far as it affects lands held rent-free, seems to me to be equally simple. The Supreme Court does not, in any instance, determine the question as to the validity of the tenure. It merely goes the length of determining, that the right of *A.* is superior to that of *B.*, without in any manner deciding that there is an indefeasible right in either. Denying as I do the mischief, it is hardly requisite to discuss the efficacy of the suggested remedy of appointing the several Collectors to the office of Receiver; but I shall merely mention, as one of the grand objections to this system, that it would entail the performance of duties in their nature frequently conflicting, and that the Collector, in his capacity of a servant of the State, might often be called on to act in a manner prejudicial to the interests of the individual whose estate is confided to his management; for the Government, I presume, would hardly concede to an estate so circumstanced, the privilege of exemption from sale, on account of arrears.

With reference to the defect noticed of the provision contained in the 107th Section of the 53d of the late King, c. 155, which has been held not to permit one British born subject to be impleaded by another in the Country Courts, it is sufficient to observe, that constructions have been given both ways by successive Advocate Generals, though it is certainly desirable that the law should be settled in one way or the other. There is little danger, I think, to be apprehended from collision between the King's and Company's Courts, in cases in which they have concurrent jurisdiction. The Company's Courts would be prohibited by our regulations from hearing a suit which had already been determined by a competent authority, as the Supreme Court must be admitted to be; and in deference to an established and well-known maxim of jurisprudence, the Supreme Court would regard as *res judicata* a matter which had been determined by one of the Company's Courts. Where concurrent jurisdictions exist, there must always be danger of conflicting judgments. To limit the jurisdiction of the Supreme Court to the area comprised within the Mahratta Ditch, would certainly be a royal road to simplicity; but I do not think that this specific would be either very consonant to the inclination of the Judges of that Court, or just to the claims of its suitors. It would hardly be equitable to allow a man to enter into all kinds of commercial engagements, and to exempt his property from the liability to which he has subjected it, simply because it does not happen to be in the very spot where the contract may have been entered into. In truth, it is very difficult in any country where there is a multiplicity of jurisdictions to prevent their clashing. In Mr. Brougham's Speech on the present State of the Law in England, there is an amusing and instructive account of the conflict of the King's Bench and Common Pleas, and of the competition of the three Courts. If the Supreme Court of Judicature in this country grasps at jurisdiction, it is not singular in its propensity.

V. Legislative Councils; Courts of Justice; Code of Laws.

The Sudder Dewanny Adawlut has lately consulted the Advocate General as to their power of punishing for contempt an European, who sent into the Court a libel on the Judges, the offence being of course committed in Calcutta. His reply has not yet been received; but should it be in the affirmative, I believe the Court have it in contemplation to suggest the enactment of a regulation, extending their powers of punishment in such cases; for though the existing penalties are sufficient perhaps to deter natives from the commission of this offence, yet they are clearly insufficient to restrain the wealthy and litigious European from attempting to browbeat and insult the Judges, whose decisions may not be exactly conformable to his cupidity. I am not aware that in any other respect the powers given to the Sudder Court by Act of Parliament for enforcing their process are inadequate. Mr. Mackenzie seems to think that false swearing in the Sudder Dewanny and Nizamut Adawlut would not be punishable as perjury by the Supreme Court. I do not know on what this opinion may be founded, but a former Advocate General, Mr. R. Smith, distinctly declared in a communication to this Court, dated the 2d January 1812, that the offence in question would be so punishable.

To establish a system of registry for persons subject to the jurisdiction of the Supreme Court, on the principle suggested by Mr. Mackenzie, would, I think, be extremely difficult. Every man must necessarily be entitled to plead in bar of the jurisdiction. It would be unjust, nay intolerable, to deprive a party sued of this right, because he had been registered on a summary and *ex parte* inquiry; and if this were not done, what would be the use of the registry?

The objections to employing our local judicial officers in aid of the process of the Supreme Court, as it is at present constituted, appear to me quite insurmountable. In the first place, they positively want the leisure; and, in the second place, from their ignorance of technicalities, they would be perpetually committing blunders, and involving themselves and the Government in embarrassment and confusion. To meet the existing difficulties, it appears to me, that no unobjectionable scheme can ever be devised, so long as the Mofussil Courts are subject to one authority, and the Court at the Presidency to another. Were India transferred to the Crown, the simplest plan apparently would be to take away from the Supreme Court all native jurisdiction, confining them to cases in which Europeans are concerned, and giving to the present Sudder Adawlut, under the designation of the Supreme Native Court, exclusive jurisdiction in cases concerning natives, whether in or out of Calcutta. The consideration of this, however, and of the other points adverted to at the conclusion of Mr. Mackenzie's Paper, would require infinitely more leisure than I can at present devote to the task. I therefore return all the documents, with these hurried observations, as I despair of being able to offer, within a moderate period, any suggestions calculated to be conducive to practical utility.

April 9, 1829. (signed) *W. H. Macnaghten.*

No. 12.

NOTE by Mr. *J. W. Hogg*; dated 17 May 1829.

I do not find among these Papers any representation of any Collector or Zillah Judge, stating any evil that has actually arisen from the appointment by the Supreme Court of a Receiver of the rents of lands in the interior.

That power has been exercised by the Court for a period of forty years and upwards, and it seems strange that no causes of loss to the public Revenue or injury to private individuals have been adduced. I myself have a pretty accurate knowledge of the proceedings of the Supreme Court for the last thirteen years. During all that time the Receiver has had under his charge various lands in the Mofussil; yet, till now, there has been no difficulty, embarrassment or complaint.

And be it remembered, that the attention of Government has not been drawn to the subject by any practical inconvenience that has actually been experienced, but by the refusal of the Mofussil authorities to recognize the Receiver, or afford him the usual aid in the discharge of his duty; assigning as their reasons various ills that must inevitably result from such a measure, but which have been averted for nearly half a century.

I confess, that on perusing the Papers, the first thing that struck me was, the absence of facts from which arguments could be fairly drawn, or remedies suggested. All is speculation; a host of imaginary perils are conjured up, which are difficult to combat, because they are unreal.

With respect to the jurisdiction of the Supreme Court over lands in the Mofussil, it

it is now much too late to agitate that question, except by application to the Legislatures. I can well understand the grounds on which it might have been contended, when the Court was first established, that it ought not to exercise any jurisdiction over lands in the interior; and, circumstanced as the country then was, many arguments might have been adduced that now are no longer applicable. But when the jurisdiction in certain cases is conceded, I am unable to understand how it can be contended that the Court in such cases cannot appoint a Receiver, which is only the exercise of a power incidental, if not essential, to jurisdiction. The Court which can adjudicate as to the right, title and inheritance to landed property, must, of necessity, have the power to appoint a Receiver to collect the rents, and protect the property pending the litigation.

In India the local Government is now affording increased facilities to Europeans to reside and hold lands in the Mofussil. At home, by the late Insolvent Act, the whole property of the insolvent is vested in the assignee named by the Court, and no distinction is made between a house in Calcutta and a talook in the Mofussil; and under the provisions of this Act, extensive estates must often be vested in the assignee, with power not only to collect the rents, but to sell the interest of the insolvent. Surely then this is not the time to contend that no officer appointed by the Supreme Court ought to be permitted to collect the rents of lands in the Mofussil, or to urge that such an interference would be incompatible with the interests of the Government and the safety of the public.

The first danger apprehended is, loss to the public Revenue. I confess I am wholly unable to understand how injury or danger can possibly accrue to the public Revenue from such a cause.

When the Court appoints a Receiver, that officer is empowered to collect the rents then due and to accrue due; in the same manner that the proprietor himself could collect them. He is bound to discharge the Government Revenue out of such rents, when collected; and if the Revenue should not be paid, the lands are as liable to sale in the hands of the Receiver, as in the possession of the native proprietor. Where then is the danger or difficulty? Is not the payment of the Revenue more secure, from the very circumstance of the rents being collected by a responsible public officer, who is personally liable, and can be summarily punished for misconduct? Refer to all the cases where Receivers have been appointed, and let me ask if, in any single instance, the Revenue has been unpaid, or any loss otherwise sustained by Government? If the Mofussil authorities will only aid the Receiver in the discharge of his duties, the payment of the Revenue will be as certain as if the rents were paid into the Public Treasury.

It does not appear to me that any new regulation need be framed. I would suggest, that when a Receiver is appointed by the Supreme Court, he should be directed to file with the Secretary to the Sudder Board an office-copy of the order, or ordering part of the decree whereby he is appointed, and wherein the lands and premises are set forth; and the Sudder Board can issue to the local authorities the necessary instructions to recognize the appointment of the Receiver, and to afford him the usual aid in collecting the rents.

In like manner, as to partitions, let the same force be given to a partition made by the Supreme Court as to one made by the local authorities; and let the parties have a like liberty to register their separate shares in their separate names, and to call upon the Collector, in the usual form, to allot to each share the proper portion of Government Revenue. The decree of the Supreme Court allots and sets out in severalty to each the share to which he is entitled, but it in nowise affects, or can affect, the right of Government to collect the Revenue, nor the mode of enforcing payment of it.

It would be a hardship if, after a family had separated, the share of one should be sold for the default of another; and this has accordingly been provided against by the regulation enabling the parties to call on the Collector to apportion the Revenue; and I cannot see why this indulgence (if indulgence it can be termed) should not be conceded to the parties where the partition has been made by the decree of the Supreme Court.

The party wishing to have the decree recognized and acted upon in the Mofussil, might be required to file an office-copy of the ordering part of the decree with the Sudder Board, who could issue the necessary orders. Indeed, what I have suggested is only that effect should be given to the decrees of a Court of competent jurisdiction.

In the Supreme Court no matter can be litigated that has already been determined by any Zillah Judge or Court of competent authority; and the decree or

V. Legislative Councils; Courts of Justice; Code of Laws.

judgment of such Judge or Court could be pleaded in bar of any suit or proceeding in the Supreme Court relative to the same subject matter.

I have heard it complained, that there is not entire reciprocity in enforcing decrees and judgments, and I admit the truth of the observation; but this arises from the different constitution and powers of the Courts, and does not depend on the will of the Judges that preside. By Charter, the process of the Supreme Court runs through the provinces, and the Court enforces its own decrees and judgments by its own process, in the execution of which all local authorities are required to be aiding and assisting. Not so with the Country Courts; their process (except as provided for by Statute) cannot be executed within Calcutta; and a party seeking to enforce a Mofussil decree in Calcutta, must sue upon that decree, which will be recognized and enforced by the Supreme Court.

I have suggested, that the Receiver should file a copy of the decree or order, whereby he is appointed, with the Sudder Board, rather than forward it to the Collector and Zillah Judge, because it appears to me to be the course most simple, and the least likely to induce collision. If the lands were situated in different districts, the estate would be put to great expense, if it were necessary to send a copy of the decree or order to each different authority; and these authorities would probably rather receive their instructions from the Sudder Board than from any other quarter.

I shall now notice the second objection, which, if well founded, would indeed be most serious.

It is supposed that the native Managers and Mooctears appointed by the Receiver may plunder and oppress with impunity, being exempt from the authority of the Mofussil Courts, and that the suffering Ryots are remediless, unless they undertake a pilgrimage to Calcutta, surmounting all the prejudices and braving all the horrors so glowingly pourtrayed by my friend Mr. Mackenzie. Every native appointed by the Receiver is as amenable to the Country Courts for every act of violence or extortion as any individual in the districts; and if the Receiver himself were there, and should so conduct himself, he would, in my opinion, be as liable to the authority of the Zillah Magistrate as any other European.

There is a clear and marked distinction between that which is done in virtue of office, and outrage committed under mere colour and pretence of office. It would not be competent to the Zillah Judge, or Collector, to say to a Mooctear duly appointed by the Receiver, "We shall not recognize you on your authority, or permit you to "collect the rents." But it would be competent to the Mofussil authorities to prevent that Mooctear from exacting more than the Ryots were bound to pay, or to punish him for any acts of violence or oppression he might commit.

I cannot see how there can be any extortion under such circumstances. If the Ryots will not pay, the Mooctear must apply to the Judge, who will only pronounce his decree for the amount actually due. The Mooctear cannot receive without the aid of the Mofussil process; and if he should attempt to take the law into his own hands, he would be liable to punishment like any other wrongdoer.

Lands in the Mofussil, when under the charge of a Receiver, are generally let on farm to natives, who are of course in all respects in the situation of the proprietors, entitled to the same remedies, and subject to the same liabilities. In the case which called for the present discussion, I, being then Receiver, determined not to let on farm, for special reasons. The parties on whose behalf I was acting, having been excluded from all enjoyment of the joint family property, were unable to afford me any information respecting the parcels allotted to them, and I therefore wished to retain the lands under my own management, until I could ascertain their value, and be able to form an opinion as to the biddings when they were put up to farm. Besides, I had reason to believe, that if the lands were then put up to farm, the eldest member of the family would himself take them in the name of some dependent, for the very purpose of defeating the object of the Court in ordering those parcels to be severed from the rest of the family property.

Unless some such special reasons compel the Receiver to undertake the trouble of managing by his own Mooctears, he will, in all cases, let to farm, as most for the benefit of those interested, and less troublesome to himself. While I held the office of Receiver, I was appointed Committee of the Estate of Juddoonaut Baboo, a lunatic, then confined for debt in the great gaol in Calcutta. He had large landed estates, but had long been greatly embarrassed, and his affairs were in the greatest confusion. He had let a great part of his own property on puttinee, and had taken many talooks from others on the same tenure, which much increased the difficulty of management. As I did not know when the man might be restored to reason, I considered it my duty not to farm the talooks, but to retain them in my own management,

management, that I might be able to restore them to the proprietor on his recovery; and I accordingly collected myself by Mooctears. I applied to the different Mofussil authorities, particularly in Zillah Hooghly, from whom I received the most ready and courteous assistance, and was able to discharge my duty without any collision or difficulty.

It is suggested, that by the appointment of a Receiver all the Ryots on the estate become amenable to the Supreme Court. It is not so; they are not liable further than every native or other person, who opposes the process of the Court, is liable to answer for the contempt.

If the Ryots, after knowledge of the order appointing the Receiver, were to pay to another, an attachment might issue against them; but no such process has ever issued, or been applied for by any Receiver, to my knowledge. I do not think that it would answer practically to appoint the Collector the Receiver of the Court for the lands within his district. Where the lands were situated in different districts, there would be many Receivers, all officers of the Court, and thereby subject to its orders, in a way that would necessarily interfere with their public duty.

I believe I have noticed all the dangers and difficulties alleged as likely to accrue from the appointment of an officer of the Supreme Court to be Receiver of the rents of lands in the Mofussil, and I have suggested what occurred to me as sufficient to remove every real difficulty. I shall now briefly advert to some of the general suggestions of Mr. Mackenzie; and I feel I shall find it easier to point out objections to what has been proposed, than to originate any thing better myself.

The liability of any person to the jurisdiction of the Supreme Court, at any stated time, is a mixed question of law and fact, which can only be determined by the Court itself. No system of registry could be of any avail, because there could be no competent authority to determine the question at the time of registry; and if then determined as to any individual, that same person might be differently circumstanced on the following day, and be either free from past or subject to new liability.

The liability of any person to the jurisdiction depends upon what is variable, and therefore cannot be measured by any fixed standard.

Mr. Mackenzie is in error in supposing that the process of the Supreme Court can issue against any person without previous inquiry as to his being subject to the jurisdiction. No process can issue against any person, not even against a British born subject, without an affidavit stating the party to be subject to the jurisdiction, and in what manner.

This is the only precaution that can be taken to avoid an abuse of the process; and the party may afterwards appear, and deny his liability, and that issue will be tried before the merits of the case are gone into.

With reference to an observation in one of the accompanying Papers, I may here say, that a native resident in the Mofussil is not subject to the jurisdiction of the Supreme Court by reason of his having land or houses in Calcutta. It is true that the title to such property within Calcutta could only be determined by the Supreme Court; and so far, but no further, can the proprietor be said to be subject to the jurisdiction. For example: *A.*, a Hindoo, resides at Patna, and has neither a family dwelling-house nor house of business in Calcutta; he has however land in Calcutta, which is wrongfully entered upon, and possessed by *B.*; *A.* must seek his redress against *B.* in the Supreme Court, and *B.* may bring a cross suit against *A.*, who will be held amenable, and compelled to answer as to *that subject matter* respecting which he himself sues, but not otherwise.

I think it is to be regretted, that when the Court was first established, the Judges did not frame processes suitable to the country, instead of adopting all the English forms. The attention of the present Judges is now directed to this subject, and rules have already been framed, and will shortly be published, that will obviate many of the inconveniences arising from executing the process at a distance from Calcutta. While English law and practice prevail in the Supreme Court, I fear there would be an insuperable objection to the plan of referring the whole or any part of the matters in issue to the decision of any of the Mofussil Courts. The Supreme Court must itself hear and determine all matters before it, and has no power to delegate any part of that authority to any other tribunal. Wherever there are Courts of concurrent jurisdiction, there must sometimes be conflicting decisions. This may be lamented, but must be submitted to, as an evil incident to human frailty throughout the world, and not peculiar to this country or its institutions.

I think it would be most desirable if the process of the Court could be executed by the local authorities, and I believe it is so at Madras, beyond a certain distance

V. Legislative Councils; Courts of Justice; Code of Laws.

from the Presidency. I fear, however, there would be some difficulty, from the wording of the Calcutta Charter, which directs all process to be executed by the Sheriff. The Sheriff might appoint any number of deputies, but he would be legally responsible for the acts of each; and the inadvertence of any one of the number might fix him with liability to an extent that would deter any one from accepting the office.

I was not aware that doubts had been entertained, whether a person swearing falsely in any judicial proceeding in the Sudder Dewanny could be indicted for perjury in the Supreme Court; and as the grounds of such doubts are not mentioned, I am unable to meet them. Some case may probably have been submitted to the Advocate General, where the swearing, though false, did not amount to the legal offence of perjury; and hence may have arisen the general doubts; but if the false swearing was wilful, and material to any matter pending judicially before the Sudder Dewanny or Nizamut Adawlut, I should think that the offender could be indicted for perjury in the Supreme Court.

Some legislative provision must soon be made for the trial and punishment of all offences and crimes committed by British subjects in the interior, and at a distance from Calcutta. It is almost a denial of justice to require a prosecutor and all his witnesses to abandon their houses and callings, and proceed to Calcutta, perhaps from the most remote parts of Hindoostan. The jurisdiction of the Country Courts over British subjects in criminal cases is now limited to cases of assault and trespass, and I do not think that it will be extended. Some new tribunal must be constituted, and none seems so consonant to English feeling, or so free from all objections, as general sessions of the peace, to be holden at the principal stations, before two or more Justices of the Peace, with an English barrister of experience and standing presiding as Chairman. It would not be necessary that the jurors should be British subjects, as formerly; and I do not think that there would be any difficulty in assembling a full jury of persons professing the Christian religion at any of the stations enumerated by Mr. Mackenzie.

But these and all other matters relating to India will soon be under the consideration of Parliament; and from the increased attention of late bestowed on Indian affairs, they will, I trust, be maturely considered. I could not venture to obtrude any suggestions of my own, without giving the subject time and consideration that I have not at my disposal.

All who are acquainted with the Statutes relating to India must admit, that they are framed most loosely, and evince throughout an absence of local knowledge and experience; and all who have resided long in this country must, I think, regret that a general power of legislation is not vested in some local Council, that might be constituted so as to exclude all cause for jealousy from any quarter.

17 May 1829. (signed) *J. W. Hogg.*

— No. 13. —

NOTE by Mr. *A. Ross.*

(A.)

IT seems to me quite clear, that a decree or order of the Supreme Court, adjudging to a party a certain share of a joint estate situated out of Calcutta, and assigning specific villages or lands as forming that share, and apportioning the public assessment on those lands, is inconsistent with our regulations, and cannot be attended to either by the Judicial or by the Revenue Officers of Government.

I mean, of course, that in so far as the decree or order affects the public assessment, the local authorities cannot attend to it. In every other respect I should think they must recognize its validity.

In cases such as that of Woomeschunder Paul, I conceive the best course for the Supreme Court to pursue would be that which is followed by the Sudder Dewanny Adawlut, namely, to adjudge merely the share or the specific villages of the estate to which the party suing may be considered entitled, and to direct the Collector, in the case of a share being adjudged, to assign the lands or villages for that share; or in the case of specific lands being awarded, to apportion the public assessment to be charged on those lands. The only valid objection to the adoption of this course appears to me to be the impracticability of giving effect to the rules prescribed for the partition of estates in a reasonable time. But those rules might be much simplified. In the permanently settled provinces, where the rental

of

of our estates (generally speaking) much exceeds the public assessment, great nicety in making a division is not now necessary to secure the interests of Government. All that seems requisite for that purpose is, that the Collector should satisfy himself that no one of the shares into which the estate is divided, is charged with a larger proportion of the general Jumma than the others, with reference to the rental for the time being, as exhibited in the village accounts. If a joint proprietor of an estate, desiring a separation of his share, were willing to agree to a butwarra made in this manner, I should think it ought not to be objected to by Government. I dare say the division of Woomeschunder and Premchunder Paul's estate was made in this way by the Commission appointed by the Supreme Court.

(B.)

The most simple remedy for the evils mentioned, would be to make the Receiver appointed by the Supreme Court to the management of an estate, and those acting under him, amenable in all respects to the laws in force in the district in which the property might be situated, with the option of appealing from the decisions and orders of the local authorities, either to the Supreme Court or to the Sudder Adawlut. In civil suits in which an European is a party, this option of appealing to either of the tribunals mentioned is allowed by the Act 53 Geo. III. cap. 155.

(C.)

I am inclined to concur in the opinion that good would result from the Supreme Court being vested with the same controlling powers as the Nizamut Adawlut over Magistrates and other officers of Government in the provinces; and I am disposed to think, also, that advantage would be derived from giving the Supreme Court an appellate jurisdiction in all civil cases in which a party dissatisfied with the decision of a Mofussil Court might prefer appealing to it, rather than to the Sudder Dewanny Adawlut; provided in such cases the process of the Court were made as simple and as little expensive as that of the Sudder Dewanny and Nizamut Adawlut. At the same time it must be allowed, that there is reason to fear that such an extension of the jurisdiction of the Supreme Court, while its process continues to be, as it now is, unintelligible to any one but a regular bred lawyer, and available to none but persons of wealth, would be productive of injustice, by enabling a rich litigant to insure the defeat of a poor one, after the latter had obtained justice in the Mofussil.

(D.)

If Section 107th of the 53 Geo. III. c. 155, does not allow one British born subject to be impleaded by another in the Mofussil Courts, the law ought to be amended. I understand, however, that the Section of the Act cited, is thought to have been erroneously construed; in which case, if there has been no decision by the Supreme Court confirmatory of the construction now acted upon, it might be advisable to take the opinion of the present Advocate General on the point, with a view to revoking the Circular Order issued to the Mofussil Courts, founded on the construction referred to.

(E.)

Nothing more would seem to be necessary to make the Supreme Court part of the general scheme for the administration of the judicial business of the country, than to give it a concurrent appellate jurisdiction, in all matters civil and criminal, with the Sudder Dewanny and Nizamut Adawlut. Its jurisdiction, however, in original civil suits, should, I conceive, be confined within the limits of the Mahratta Ditch. To empower it to try in the first instance (without the consent of the defendant) suits in which the property litigated might be situated in a distant province, would, as I have already observed, open a door to injustice and oppression. It would enable a rich man to bring an unjust suit against a poor one before a tribunal in which the latter could not defend himself.

Collision between the two Courts might, perhaps, be guarded against as much as it can be, by making it a rule, that an appeal preferred to the one should be a subsequent appeal to the other in the same case.

If it were said, that by adopting this plan of giving to the Supreme Court all the powers of the Sudder Dewanny and Nizamut, the latter Courts would be rendered unnecessary, I would reply, no; because the Supreme Court could not get through

a tenth part of the business to be disposed of, and also because, although it might be desirable that all persons in the interior, Natives as well as Europeans, should have the option of appealing to that tribunal, it is most probable, even were its mode of procedure simple and inexpensive, that the great majority of the people would prefer the Sudder Dewanny, on account of the greater acquaintance of its Judges with their language, manners and customs.

(H.)

Whatever alteration in the jurisdiction of the Supreme Court may be adopted, I conceive it is very desirable that its orders and processes extending to the Mofussil should be executed by the local authorities, in like manner as those of the Sudder Dewanny and Nizamut Adawlut are. They would in this manner be much more effectually executed than they now are.

(J.)

In regard to the scheme of constituting a special Court, or Chamber, to consist of one or two Judges of the Sudder Adawlut, associated with the Judges of the Supreme Court, for the decision of cases in which the two Courts have concurrent jurisdiction, I apprehend a tribunal of such composition would not work well. The local experience and knowledge of the Sudder Judges would not probably be thought by the Judges of the King's Court sufficient ground on which to form a decision, when local information, as to any particular point which it might be necessary to establish, could be obtained by the examination of the witnesses. The Judges of the Sudder, therefore, could afford but little available aid to the Judges of the Supreme Court, while the only effect of the superior legal wisdom of the latter would be to *dumbfound* the common sense of the former. I may remark also, that the wisdom which is only to be derived from the study of the laws of England, and of the rules of practice of the Courts of that country, is not necessary to enable a Judge to administer substantial justice in other countries. On the contrary, I have somewhere seen it observed, that where a simple and rational code of procedure exists, a man of liberal education, having a knowledge of the science of jurisprudence, and a mind disciplined to habits of reflection and combination, would be essentially better fitted for the exercise of the judicial functions, than one burthened and trammelled with all the legal wisdom and knowledge of Lord Eldon.

I should fear, therefore, that any attempt to join together in one Court the learned wisdom of the King's Judges and the unlearned common sense of the Sudder Judges, in a way likely to be productive of advantage, would fail. It would be much better, I conceive, to let each work separately, giving appellants the option of submitting their cases to whichever of the two they might prefer.

(K.)

As a disciple of the Bentham school of jurisprudence, I cannot but object to the proposed mode of providing for the punishment of British subjects in the interior of the country. The difficulty and inconvenience which would attend the assembling of three Justices of the Peace to hold a sessions, where there are so few of those functionaries, is alone a great objection to the plan; and that objection derives tenfold force from the consideration that one Justice or Magistrate (if qualified) holding a sessions would get through the business to be disposed of both quicker and better than three or any greater number sitting together could do. I would prefer making British subjects choosing to reside in the interior amenable, for offences not amounting to felony, to the ordinary local criminal Courts, with the right of appealing from their sentence either to the Supreme Court or to the Nizamut Adawlut; both of these Courts being vested with power to confirm or annul convictions, and to alter sentences; and in cases in which the evidence appeared unsatisfactory, to order a new trial in the local Court *before a Jury*.

British subjects would certainly have reason to complain of being prevented settling in the interior by being made amenable to Courts not entitled to their confidence; but it would be otherwise if the local Courts afforded requisite security for justice being duly administered by them. To Courts affording that security, on whatever model they might be formed, British subjects could not more reasonably object than the natives of the country; and if any one did object, he might then be told that he was at liberty to quit their jurisdiction if he did not choose to submit to it.

I should

(L.)

V. Legislative Councils; Courts of Justice; Code of Laws.

I should hope Parliament would not consent to give the Government in India a *general* power of legislation, without any local check being imposed upon it. A Legislative Council, however, formed on right principles, appears to be very desirable. One thing would be essential, I conceive, to the usefulness of such a Council, namely, that the number of its members should be large; for in the making of laws, the wisdom of a multitude of counsellors cannot but be advantageous. The Chief Judge of the Supreme Court would, I should think, be a useful member of the Council; and as he could *there* exercise only legislative functions, his office being a Judge could hardly be made an objection to him. It is only on the bench that a Judge *can* act judicially, and it is only there that a junction of legislative and judicial functions seems to be possible.

(signed) *A. Ross.*

—No. 14.—

LETTER from *W. H. Macnaghten*, Esq., Register, Sudder Dewanny Adawlut, to *Henry Shakespear*, Esq., Secretary to Government in the Judicial Department.

SIR, Fort William, 5 June 1829.

Sudder Dewanny Adawlut.
Present:
W. Leycester, Esq.
A. Ross, Esq.
C. T. Sealy, Esq.
R. H. Rattray, Esq.
and
M. H. Turnbull, Esq.
Judges.

I AM desired by the Court of Sudder Dewanny Adawlut to request that you submit for the consideration and orders of the Right Honourable the Governor General in Council the accompanying copy of a Letter, under date the 27th of February last, written by their order to the Honourable Company's Attorney, and of that officer's Reply and its Enclosure, dated the 25th ultimo.

2. It appearing to be the opinion of the Advocate General that this Court does not possess the power of punishing an European British subject for contempt of Court, and its being obviously essential to the maintenance of that respect which is due to judicial authority that such power shall be conferred, I am directed to solicit the attention of his Lordship in Council to the subject, and to suggest that such measures may be adopted as may seem expedient to Government for procuring the enactment of some legislative provision to render European British subjects punishable for contempts committed in the Company's Courts, in like manner with other individuals who resort to those tribunals for redress.

3. The Court desire me to add, that the mode of proceeding suggested by the Advocate General, namely, preventing a person guilty of contempt from acting as an attorney, and removing him from the Court, would not seem to afford them sufficient protection against insult while in the discharge of their official duties.

I am, &c.

(signed) *W. H. Macnaghten*, Register.

(Enclosures.)

LETTER from *W. H. Macnaghten*, Esq., Register Sudder Dewanny Adawlut, to *R. W. Poe*, Esq., Attorney to the Honourable Company.

SIR, Fort William, 27 February 1829.

Sudder Dewanny Adawlut.
Present: W. Leycester, Esq., Chief Judge
A. Ross, Esq. C. T. Sealy, Esq. R. H. Rattray, Esq. M. H. Turnbull, Esq. Puisne Judges.

1. I AM desired by the Court of Sudder Dewanny Adawlut to request that you will beg the favour of an opinion from the Advocate General on the following question:

2. By Clause cxiii. of the 53d George III. c. 155, it has been declared lawful for the Court of Sudder Dewanny and Nizamut Adawlut to execute, or cause to be executed, upon all persons subject to their jurisdiction, all manner of lawful process of arrest within the limits of the town of Calcutta. By the provisions of Regulation XII., 1825, the Civil and Criminal Courts are authorized to punish persons guilty of contempt, by adjudging a fine not exceeding two hundred rupees,

commutable, if not paid, to imprisonment, not exceeding two months. The Court are desirous of being informed whether, under the above provisions, they are authorized to inflict the penalty in question on a European British subject, who, acting as attorney in a civil suit, or otherwise coming within the Court's premises, may be guilty of contempt, and if so, in the event of the non-payment of the fine, in what gaol the offender should be confined.

I am, &c.

(signed) *W. H. Macnaghten*, Register.

LETTER from *R. Molloy*, Esq., Acting Attorney to the Honourable Company, to *W. H. Macnaghten*, Esq., Register, Sudder Dewanny Adawlut.

SIR, Fort William, 25 May 1829.

HAVING laid your Letter to the address of Mr. Poe, dated 27th February, and received 11th of March last, before the Advocate General, I now beg leave to forward a copy of his Opinion on the matter therein contained, received this day.

I have, &c.

(signed) *R. Molloy*,
Acting Attorney to the Hon. Company.

OPINION.

I DO not think that the Statute 53d Geo. III. applies to the present case. The only question is, whether, under the Regulation cited, the Sudder Court is authorized to inflict the penalty on an European British subject. Assuredly such person is not commonly subject to a Provincial Court, held within any of the chief towns of the three Presidencies; and, upon the whole, I am inclined to think that it does not possess the power of punishing him for contempt by fine and imprisonment. I presume, however, that the Judges may prevent his acting as an attorney in the Court, and if he causes any disorder, or interrupts the proceedings, or treats the Judges with insult while in the discharge of their duty, they may remove him from the Court.

(signed) *John Palmer.*

(A true Copy.) (signed) *R. Molloy*,
Acting Attorney to the Hon. Company.

(True Copies.) (signed) *W. H. Macnaghten*, Reg^{r}.

— No. 15. —

COPIES of OPINIONS as to the Powers of the Mofussil Court to take COGNIZANCE of Civil Suits in which both Parties are Europeans.

COPY of Mr. *Minchin*'s OPINION on Section 107th of 53 Geo. III.

I HAVE perused the Opinion of Messrs. Fergusson and Spankie, and notwithstanding the deference which I should always be inclined to pay these gentlemen, yet I cannot on the present occasion assent to the propriety of the construction which has been put by them on the 107th Section of the 53d Geo. III.

By the preamble of the 105th Section, after reciting that British subjects resident in India without the towns of Calcutta, Madras and Bombay, were by law exempted from the jurisdiction of the Company's Courts, to which all other persons, inhabitants of the territories, &c. were amenable, it is stated, that it was expedient to provide more effectual redress for the native inhabitants, as well in the case of assault committed by British subjects at a distance from the Supreme Court, as in cases of civil controversies with such British subjects, it enacts, that in cases of assault, &c. committed by a British subject on a native, the magistrate of the Zillah shall take cognizance of the charge. The enactment of this clause, as well as the next, as to debts under Rupees 50, are undoubtedly confined to claims of natives on British subjects. But the 107th Section takes a much wider scope; it is not confined to native inhabitants (as is *coniended* by Mr. F.), or merely to the civil controversies

troversies between natives; but it defines the jurisdiction of the Courts in the Mofussil; for it enacts, "That all British subjects of His Majesty, as well Company's servants as others, who shall reside or carry on trade, &c. or occupy or possess immoveable property at the distance of more than ten miles from the Presidency, shall be subject to the jurisdiction of all Courts which now have, or hereafter may have, *cognizance of civil suits or matters of Revenue*, and in all actions, &c., and *in all matters of Revenue*, in the like manner as natives of India are now liable to the jurisdiction of such Courts," &c. These very general words, which are not confined by any preamble, place all British subjects residing, carrying on trade, or possessing immoveable property in the interior more than ten miles from Calcutta, on the same footing as natives of India, with respect to the jurisdiction of the Mofussil Courts. It is under this clause only that the Company could be enabled to sue a British subject for any matter of Revenue; and I doubt very much whether the Company's law officers would have ventured to have advised the Government that they, as Europeans, could not maintain their claims against other British subjects in the Mofussil Courts, especially when, if so, the Supreme Court being especially precluded from interfering in matters of Revenue, a British subject indebted to the Government on account of Revenue could not be impleaded at all. This, as it appears to me, is the necessary consequence of the argument used on the other side, and, in my opinion, confutes itself.

COPY of Mr. Serjeant *Bosanquet*'s OPINION on the same Subject.

IT appears to me, after the best consideration which I have been able to bestow upon the Statute 53d Geo. III. c. 155, and the Opinions which have been already given on the subject, that the Zillah Courts have jurisdiction in civil suits between British subjects in the cases provided for by the 107th Section of that Act.

I certainly think that the preamble, by which the 105th Section is introduced, has reference to the 107th Section, as well as to the two preceding Sections, and that the words "civil controversies" are not satisfied by the provisions of the 106th Section only.

But it frequently happens, that the enacting part of a Statute is extended beyond the scope of the preamble, and though the preamble, in a case of doubt, affords a useful guide to the intention of the Legislature, it will not be sufficient to restrain the effect of an enactment, where the words are clear, and the intention to embrace a larger field is apparent.

The 105th and 106th Sections are in terms confined to the complaints of natives; but in the 107th Section the language is changed, and a much more comprehensive form of expression adopted.

Before the passing of the 53d Geo. III. it was competent to a British subject, as plaintiff, to sue a native in the Zillah Court.

The 107th Section of the Act now provides, that all British subjects who shall reside, carry on trade, or occupy immoveable property at a distance of more than ten miles from the Presidency, shall be subject to the jurisdiction of all District Courts, having cognizance of civil suits on matters of Revenue, in all actions and proceedings of a civil nature, and in all matters of Revenue, except as therein excepted, *in the like manner as natives of India* and other persons not being British subjects *are now liable* to the jurisdiction of such Courts under the Government Regulation. By the express terms of the enactment, a British subject is made liable to suit in the Zillah Court in the same manner as a native; and if a British subject could sue a native before the Act, it seems to follow that he may sue a British subject now. The objection to this construction is, that the whole object of these legislative provisions was to give relief to natives only, leaving British subjects in the same situation in which they stood before the passing of the Act; but though this may be truly said respecting the matters of the 105th and 106th Sections, it is evident that the 107th Section contemplated something more than suits on the complaints of natives, since British subjects are rendered liable to suit in the Zillah Courts, not only in all actions and proceedings of a civil nature, but in all matters of *Revenue*, which cannot, I apprehend, relate to the demands of natives.

It has been observed, that the appeal to the King's Court of the Presidencies is only given to British subjects *against* whom suits may be brought; from which an inference is drawn, that the clause was not intended to embrace cases where British

V. Legislative Councils; Courts of Justice; Code of Laws.

subjects were plaintiffs. But to this it may, I think, be answered, that British subject plaintiff is left in the same situation as he was before the Act. If he sued a native, he must appeal to the Court having the regular appellate jurisdiction from the native Courts.

By the Statute a British subject is made liable to jurisdiction of the Zillah Court in the same manner as a native; if, therefore, a British subject would sue a British subject in the Zillah Court, he must sue him as he would sue a native, and appeal in the same way.

I can see no reason why such a decided difference of expression should have been adopted in the 107th Section from that which had been pursued in the two preceding Sections, unless a more extensive effect was intended to be given to the 107th Section.

COPY of Sir *N. Tindal*'s OPINION on the same Subject.

I AGREE in opinion with Mr. Serjeant Bosanquet and Mr. Minchin, that the 107th Section must be considered as applying to the case of a suit in which both plaintiff and defendant are British subjects; first, From the generality of the words in that Section, by which British subjects are made subject to the jurisdiction of those Courts, in like manner as natives of India; and it is well known that natives of India were subject to the suits of British subjects in those Courts; secondly, Because they are made liable to all actions and proceedings of a civil nature, and in all matters of Revenue, and questions of Revenue can only arise between British subjects and the Government; and thirdly, Because by the 108th Section no British subject shall be allowed to sue any civil action against any person whomsoever in these Courts until he shall file a certain certificate, which shows that British subjects might maintain the character of plaintiffs, as the former Sections have shown that they might be defendants.

—No. 16.—

LETTER from the Judges of the Supreme Court at *Calcutta*, to the Secretary of the Board of Commissioners for the Affairs of *India*.

SIR, Calcutta.

WE beg that you will submit to the Right Honourable the President and Commissioners for the Affairs of India the following Statement, with the accompanying Papers.

At the opening of the fourth Sessions of Oyer and Terminer and Gaol Delivery in the last year, it appeared that four persons, either Hindoos or Mahometans, were in the gaol, under commitments by a Justice of the Peace, upon a charge, as to three of them, of being guilty of a burglary and larceny in the suburbs of Calcutta; and as to the fourth, of having received the stolen goods after they had been carried by the others into the town. These circumstances having been brought by the Clerk of the Crown to the notice of the Chief Justice, before whom the Sessions were to be held, some further inquiry was made, and it was learnt that two of the prisoners, at least, were inhabitants of Calcutta, and that the case had been before the Provincial Court, which had disclaimed the cognizance of it, and had delivered the prisoners to the police of Calcutta.

The practice which has prevailed here has been for the magistrates to commit no persons, except such as are alleged to be "British subjects," for trial before the Supreme Court, unless the offence has taken place within the limits of Calcutta; but the commitment in this case having been made, the Chief Justice did not see how he could discharge the prisoners without putting them upon their trial; and he directed only that the indictment of the Clerk of the Crown should state the facts in such manner that any objections which the prisoners might be entitled to take should be apparent on the record.

The prisoners were tried and convicted, and the accompanying Papers are an office-copy of the record, and a copy of the Chief Justice's notes. No doubt is entertained of the guilt of the parties; but the questions of law which are involved in the case are so important, and it has long been felt to be so desirable to have them determined, that as the prisoners had no counsel, and were not in a condition to prosecute appeal, all the Judges of the Court agreed from the first as to the propriety of submitting the case to the Board of Commissioners, in order that it might be

be laid before His Majesty's Most Honourable Privy Council as if it were an appeal, or that His Majesty's pardon might be at once obtained, according to the provisions of the 20th clause of the Letters Patent of 1774, if the circumstances should seem to call for it.

As the record stands, the question seems to be, 1st. Whether when the Supreme Court at Calcutta sits as a Court of Oyer and Terminer, its authority to try persons for offences committed beyond the limits of the town of Calcutta is restricted to the cases of those persons who are intended by the phrase " British subjects," (as that phrase is used in the Charter of the Court, and in the Statutes relating to India,) and to persons in the service of the United Company, or of some British subject, or whether the authority extends generally to the subjects of His Majesty and to persons who are in their service. 2dly. If it extends generally to the subjects, then whether persons not of British descent, who are born under the sovereignty of the British Crown in India, are included in the term " subjects," as it is used in the 13th Geo. III. c. 63, s. 14, in the Charter of the Court, s. 19, in the 26th Geo. III. c. 57, s. 29, and in the 33d Geo. III. c. 52, s. 66. 3dly. If they are included, whether any other evidence is required to raise the presumption of a native prisoner being such subject, than that of his having been, at the time of committing the offence, an inhabitant of the British territories in India.

Upon the first point, it is perhaps unnecessary to mention that the terms " British subjects " and " subjects of Great Britain, of Us, Our heirs and successors, &c." are supposed to have a peculiar signification in the Charters of the three Supreme Courts and in the Indian Statutes. Their import has never been precisely defined. It is universally admitted, that they include all persons born within the United Kingdom, or whose fathers or paternal grandfathers have been born there; and unless the Island of Bombay, by force of the Charter of Charles the Second, forms an exception, that they do not include the natives of India who are not of British origin. But it is not well understood whether they do or do not include the subjects of His Majesty born in the West Indies, Canada and other British possessions out of India, or illegitimate children born in India of British persons, many of whom are Christians, receive their education in England, and on their return to India associate with the principal classes of British society, and frequently intermarry with British persons. The prevailing opinion is, that these are not " British subjects," although an expression in the 21st Geo. III. c. 70, s. 16, seems to justify the supposition that the Legislature has contemplated both British European subjects and other British subjects not European. One of the most cogent instances of its being necessary to construe the term " British subjects " in some restricted sense, is the 98th clause of the 33d Geo. III. c. 52, inasmuch as that clause prohibits all those whom the term does include from residing at a distance of more than ten miles from the seat of Government, unless under special license. Numerous other instances of the peculiar use of the expression may be found, especially in the Letters Patent by which the Supreme Courts at Madras and Bombay have been constituted, (which in many important particulars have been varied from the Charter of this Court), and in the 53d Geo. III. c. 155, s. 101, 105, 107, 108. The 13th Geo. III. c. 63, s. 34, and the Charter of the Supreme Court at Calcutta, in s. 19, manifestly employed the words in a restricted sense; and it was therein directed that Juries should be formed of *British subjects* and *subjects of Great Britain* " of Us, Our heirs and successors," &c.; but the 13th Geo. III. c. 63, s. 14, and the latter part of the 19th clause of the Letters Patent, dropped the qualifying term " British," and provided that " subjects " generally should be liable to be *tried* for treasons, &c. committed any where within the Bengal Provinces, &c.; and the 26th Geo. III. c. 57, s. 29, makes all " subjects " who are resident in India amenable to the Courts of Oyer and Terminer for any murder or other offence committed between the Cape of Good Hope and the Straits of Magellan; and the 33d Geo. III. c. 52, s. 67, in like manner makes the " subjects " generally amenable for offences committed in the territories of Native Princes.

If a construction were to be given to the term " subjects " in these latter instances which should confine its meaning to persons of British birth or descent, the Court of Oyer and Terminer at this place would be prevented from taking cognizance of any crimes which might be committed beyond the limits of Calcutta and the factories subordinate thereto, by His Majesty's colonial subjects, or by the half-castes and other native Christians of India, or by any persons whatsoever born out of wedlock beyond the limits of the United Kingdom; and inasmuch as we apprehend that there might even now be some objections against trying the Christian

V. Legislative Councils; Courts of Justice; Code of Laws.

natural-born subjects of His Majesty upon capital charges, especially treason, in the Provincial Courts, where the Mahometan law is administered and its forms observed, it would follow, that a large class of persons in India might have an immunity from punishment for the highest crimes. But when it is further considered, that at the time the Letters Patent of this Court were granted in 1774, the Provincial Courts of criminal law were held under officers of the Native Princes, and in their names; and that neither those nor any other Provincial Courts of criminal jurisdiction in Bengal had been recognized by the British Legislature, but only the Supreme Court and the Court of Quarter Sessions at Calcutta; it seems in the highest degree improbable that the Parliament could have meant to have excepted any classes of the natural-born Christian subjects of His Majesty, who might be resident in Bengal, from a liability to be prosecuted in those two Courts for their crimes and misdemeanors. These considerations lead us to conclude, that by the term "subjects" in the 19th clause of the Letters Patent of 1774, and in other passages where it occurs without the adjunct "British," the Crown and the Parliament must have meant generally the natural-born subjects of The King.

2. If this be so, it is next to be considered whether an exception can now be made of Mahometans and Hindoos, and other Indian natives, or any particular classes of them. We are aware of the old doctrines of the Common Law respecting infidels, but they have scarcely been acted upon since the Reformation; the Court of King's Bench would not avow them in the case of the East India Company against Sandys in 1684; they were rejected and stigmatized by Lord Mansfield in the case of Campbell against Hall, in 1774; they were utterly irreconcilable with the British system of Government in India, and with many of the Statutes on which it is founded; and it seems to be impossible to maintain at present, that their religion makes the Hindoos or Mahometans incapable of the character and relation of subjects. A recent Statute gives the right and liability to sit on juries to all those native inhabitants of Calcutta, Madras, and Bombay, who are not the subjects of any foreign state.

The proposition which seems to us to afford the strongest ground for contending that the Mahometan and Hindoo and other Indian natives are not generally liable to be tried, as subjects of The King, before the Court of Oyer and Terminer, for offences committed in the Bengal Provinces, beyond the limits of Calcutta and the factories subordinate thereto, is that of their being entitled, like the inhabitants of other ceded or conquered countries, to the use and privilege of the law which prevailed in each Province at the time it came under the sovereignty of the British Crown, unless it can be shown that subsequently, by some express, positive, and pointed enactment or ordinance, the former law has been abrogated, and that, in this view of the case, it is not sufficient to show, as to natives, that they, nor even that the class to which they belong, are now subject; but that it ought to be shown that they belong to a class which, in 1773–4, was intended by the term "subjects," as it was used and understood at that time by the Parliament.

Up to and at the period when the present Supreme Court was established by the Letters Patent of 1774, which were authorized by an Act of Parliament of the preceding year, the Legislature did not explicitly declare the Bengal Provinces, nor even the settlement at Fort William, and its dependencies, to be the dominions of the Crown; and although the 13th Geo. III. c. 63, is hardly intelligible, except upon the supposition of their being so in substance and reality, yet the Letters Patent of 1774 describe the settlement at Fort William as a "factory," with other factories dependent upon it; and the rights and powers of the Company and of the British Government in the interjacent provinces, are designated by the doubtful terms of territorial acquisition or possessions; which terms have continued in use even to the present time. It is, in truth, a matter of great difficulty to show with any certainty in what relation it was that the Legislature then meant it to be understood, that the Bengal Provinces and the inhabitants of them were placed; and although large powers over Hindoos and Mahometans resident within Calcutta and the factories dependent on it, and over the "subjects" of His Majesty in the territorial acquisitions, and other powers extending generally throughout every part of Bengal, Behar, and Orissa, were given by the Letters Patent, and were left untouched by the 21st Geo. III. c. 70. yet it was not made so clear as not to have been always matter of dispute whether the Crown or the Legislature then considered that any Hindoos or Mahometans, or other mere natives on this side of India, were, properly speaking, subjects of The King; neither is it easy to determine, in any

case,

case, at what periods precisely the dominion of the Mogul and other Indian Princes entirely terminated, and that of the Crown was established; but we think a fair construction of the 13th Geo. III. c. 63, and of the 21st Geo. III. c. 70, especially the 19th clause of the latter, leads to the conclusion, that even then the Legislature considered that there were native subjects; and at last the sovereignty of the British Crown over all the territorial acquisition was unequivocally asserted in 1813, by the 53d Geo. III. c. 155. We apprehend that since that time, at least, the British territories in India have been the declared dominions of the Crown, and that all persons born therein are His Majesty's subjects.

It would seem, therefore, to be necessary to state the law by which the Mahometans and Hindoos, and other natives of India, although they may be subjects of The King, yet unless they are in the service of the Company, or of some British subject, are usually considered to be exempted from the jurisdiction of the Supreme Court for offences committed beyond the limits of Calcutta. In this way the term "subjects," as used in the Letters Patents of 1774, comprehended only those classes of persons who were plainly recognized as subjects of the Crown at that time; and it had not then been declared that the Hindoos and Mahometans and other Indian natives were subjects. The latter Statutes, which have made use of the same term, with reference to the Letters Patent, or to any matters dependent on them, have used it in the same limited sense; and even so late as in the Statute 33 Geo. III. and the others which have been before mentioned, the word "subjects" means and comprehends only such classes of persons as had been claimed or recognized for subjects in 1774.

It would not, perhaps, have occurred to the present Judges of the Supreme Court to have laid down this rule of construction, if they had been called upon to look at the statutes, without any reference to usage. But it is certain that an usage has prevailed, of proceeding as if that part of the jurisdiction of the Supreme Court which belongs to it as a Court of Oyer and Terminer, did not extend to the mass of the Indian population beyond the limits of Calcutta; and it is scarcely necessary to observe, that if it did, it could not be effectually exercised. We should be at a loss, however, to say upon what legal grounds any class of the Indian natives could be considered to be not personally liable to the Court of Oyer and Terminer for crimes committed in any part of the Bengal Presidency, if it could be shown that they were of any class which in 1774 was manifestly and unquestionably subject to the Crown; and it seems to be, at the least, very doubtful whether natives of Calcutta must not have been so.

Being, however, impressed with a sense of the obligation and importance of observing cautiously every subsisting usage (which is not illegal), where the jurisdictions of two distinct and very different systems are to be experienced within the same territories, we have anxiously sought for grounds and reasons of law on which the usage which we have stated might be supported; and having pointed out the best and plainest which we are able to find, we are willing to rest upon them, such as they are.

3. If the rule we have stated be the true one, it would seem to be necessary in all cases where a party is indicted for any offence committed beyond the limits of Calcutta, to require proof, not only of his being a subject of His Majesty, but of his being of some class or description of persons who, in 1774, had been recognized as subjects, or of his being in the service of the Company or of some subject; and inasmuch as in this case there was no regular and full proof of any of the prisoners being subjects, although two of them were at the time inhabitants of Calcutta, and the others resident in the suburbs, we submit to the consideration of the Right honourable the President and Commissioners, the propriety of soliciting for the prisoners His most gracious Majesty's free pardon, according to the provisions of the twentieth section of the Letters Patent of 1774, or of laying the case, if it should be thought more advisable, before His Majesty's Most Honourable Privy Council.

From the manner in which the locality of the offence has been stated in the indictment, which contains no averment of the vicinity of Kidderpore to Fort William, it is not, perhaps, material to add, that the house in which the burglary was committed, though beyond the present limits of Calcutta, is immediately adjoining to them, and was proved at the trial to be so, and consequently is within that district of ten miles round Fort William, throughout which the jurisdiction of a Court of Oyer and Terminer was established by the Letters Patent of 1726 (the 12 Geo. I.) and within which British persons have unrestricted permission to reside. The expression

V. Legislative Councils; Courts of Justice; Code of Laws.

used in the Letters Patent of 1774, of factories subordinate to Fort William, has now no application, for all the factories are merged in dominion.

It is, no doubt, needless for us to crave the attention of the Right honourable the President and Commissioners to the painful difficulties which are connected with the unsettled and vague state of the laws under which the Court has to exercise, in the provinces, a jurisdiction in some cases concurrent, and in others conflicting, with that of the Provincial Courts; so that, in instances of the highest degree of criminality known to the law, it may chance to be the intricate question, whether a culprit is amenable to this Court or to others; and with respect to those Christian persons, born or residing in the provinces, who are not British, according to the interpretation put on that term, there are some who maintain the opinion, that for any offences above the degree of a misdemeanor, they are not amenable to either jurisdiction; and there are others who hold that a man may be amenable only to our Court as a British, whilst his wife, as a half-caste Christian, may be amenable only to the Provincial Courts, or *vice versâ*.

We are sensible that it is no right of ours to make or even to suggest alterations of the laws, but to administer them as they are. We hope, however, that we have not done more than was called for on this occasion by adverting to the perplexities which in some instances have arisen out of the present imperfect provisions, and of which the progress of time, the general understanding of the sovereignty of the Crown, the increase of the European and native Christian population, and their dispersion through the provinces, have a tendency to make a recurrence more frequent. We shall be at all times ready to suggest the best remedies that we can think of, if it is desired that we should do so; or in any other way in which it is possible for us to render assistance in correcting what is defective, our utmost endeavours may be commanded. In the mean time we shall continue to do the best we can with the law as it is.

We would gladly have spared the Right Honourable the President and the Commissioners the trouble of taking this case into their consideration, but many circumstances, and some of recent occurrence, appear to us to make it necessary for the due administration of justice, that the relations in which the native subjects stand should be rendered as free from doubt as possible; and many reasons have satisfied us that this cannot be effected to any good purpose, except by a reference of the matter home. If more delay has taken place in the present case, than was to be desired, we hope it will be attributable to its true cause, the anxiety which we have felt to state with caution the conditions of the important question of which we seek a resolution.

The occurrences which have taken place at Bombay, though they have increased our anxiety in preparing this statement, are not so connected with the case as to depend

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(Form, No. 5.) - - - - - - -

ABSTRACT STATEMENT of PRISONERS ACQUITTED by the Judge of the Court *Calcutta* for the Monthly

1.	2.	3.	4.	5.	6.
No. of Calendar.	No. of Prisoners.	Names.	Sex.	Age.	Religion or Castes.	Profession.
1	1	Khodabuksh.	Male.	55.	Moossulman.	Khansamah.
	2	Saduldolah.	ditto.	27.	- - ditto - -	- - ditto - -
	3	Shallaroo.	ditto.	28.	- - ditto - -	- - ditto - -

Belvidere, 11th August 1828.

depend on the decision of it; the present question being confined to the jurisdiction of the Court of Oyer and Terminer, and that which has arisen at Bombay, relating, as we apprehend, to the powers of the Court there as a Court of King's Bench.

We are, &c.

— No. 17.—

CORRESPONDENCE with the Nizamut Adawlut and the Magistrates of the Suburbs of *Calcutta*, respecting Khoodabux, Saduttoolah and Challaroo; marked (A. B. C. D.)

(Judicial Department.)

(A.)—LETTER from *H. Shakespear*, Esq., Secretary to Government, to *W. H. Macnaghten*, Esq., Register of the Nizamut Adawlut.

SIR, Council Chamber, 16 June 1829.

I AM directed by the Right Honourable the Governor General in Council to request that the Court of Nizamut Adawlut will report the particulars of the case noted in the margin, in which the prisoners were acquitted by the Judge of Circuit for the division of Calcutta at the gaol delivery of the suburbs of Calcutta for the monthly sessions of June 1828.

Khodabuksh, Sadutoollah, Shallaroo, prisoners; charged with burglary and theft, and participating in the division of the plundered property.

2. It appears from the Form, No. 5, which accompanied your Letter, dated the 15th of August 1828, that there was no proof against the prisoners, and that the proceedings were submitted to the Nizamut Adawlut for their final sentence on another prisoner named Ashgur Kharsamah.

The Governor General in Council desires to know whether any, and what, orders were given for transferring the above-mentioned prisoners to the custody of the magistrates of the town of Calcutta, as he understands they were afterwards committed to take their trial before the Supreme Court, and were convicted of the burglary charged against them.

I am, &c.

(signed) *H. Shakespear*,
Secretary to Government.

(A true Copy.)

- - - - - - - (Form, No. 5.)

of Circuit for the Division of *Calcutta*, at the Gaol Delivery of the Suburbs of Sessions of June 1828.

7. Crime charged, and when alleged to have been committed.	8. Acquitted for want of Proof of Guilt, or on clear Proof of Innocence.	9. Sentence of the Court of Circuit, when passed.	10. EXPLANATION and REMARKS.
--Burglary and theft, and participating in the division of the plundered property.	For want of Proof of Guilt.	20th July 1828.	--There was no proof against the Prisoner, as appears by the Proceedings, which have been submitted to the Superior Court for their final Sentence on the Prisoner, Ashqur Khansamah. *Vide* Letter, dated 2d July 1828.
- - ditto - -	- - ditto - -	- - ditto.	
- - ditto - -	- - ditto - -	- - ditto.	

(signed) *Robert Brown*, Third Judge.

V. Legislative Councils; Courts of Justice; Code of Laws.

(B.)—LETTER from *W. H. Macnaghten*, Esq., Register of the Nizamut Adawlut, to *Henry Shakespear*, Esq., Secretary to Government in the Judicial Department.

SIR, Fort William, 26 June 1829.

Nizamut Adawlut. Present: W. Leycester, Esq. A. Ross, Esq. C. T. Seally, Esq. R. H. Rattray, Esq. and M. H. Turnbull, Esq. Judges.

I AM directed by the Court of Nizamut Adawlut to acknowledge the receipt of your Letter, dated the 16th instant, requesting to be made acquainted with the particulars of the case of Khoda Buksh and three others, who were charged with burglary and theft, and receiving plundered property; three of whom were acquitted at the gaol delivery of the suburbs of Calcutta for June 1828, and the fourth of whom, namely, Ashghur Khansaman, was released by the order of the Nizamut Adawlut, under date the 16th of July last.

2. In reply, I am directed to submit the accompanying Copy of a Letter of reference which accompanied the proceedings sent by the late Third Judge of the Calcutta Court of Circuit for the final order of this Court, from which his Lordship in Council will perceive that the prisoner Ashghur was acquitted of the burglary by the Court below; and with respect to the receipt of plundered property, of which offence the law-officer of the Court of Circuit declared him convicted, a reference was made to this Court on a doubt as to the jurisdiction.

3. On reference to the Persian proceedings, it appears that there was no evidence to the actual commission of the burglary against any of the prisoners forthcoming before the Court of Circuit; that suspicious property was found in the house of Khoda Buskh, though it turned out to be his own, from the evidence of the witnesses examined. It appeared also, from the deposition of one Ahmud Khan, that the prisoners, Ashghur and the rest, were seen in the house of Buksh Khoda, in Colingah, selling the plundered property to Mooteram, who borrowed from one Jughohum the money to pay for it. This Jugmohim deposed to having sent to Moteeram a 100 rupee bank note (No. 2,916); and a note of the same number was deposited by Ashghur with one Chedam Dutt, as appeared from the evidence of the said Chedam. This circumstance, together with the fact of the plundered property being found in the house of Moteeram, was held sufficient to bring home the criminal receipt and disposal of the property to Ashghur.

4. I am directed to add, with reference to the last paragraph of your Letter, that the Court did not issue any orders for transferring the prisoners to the custody of the Magistrates of the town of Calcutta, the whole of them having been acquitted of the burglary by a competent authority; and the case of Ashghur, as involving the charge of participating in plundered property, having been referred solely on the question of jurisdiction. This point having been determined in favour of the prisoner, and the Judges by whom the case was revised considering that all the proceedings held in regard to Ashghur were null and void, they were of opinion that he was entitled to his release, which was ordered accordingly, without reference to the guilt or innocence of the prisoner; which question was not entered into by the Nizamut Adawlut.

I am, &c.

(signed) *W. H. Macnaghten*, Register.

LETTER from *R. Brown*, Esq., Third Judge of the Calcutta Court of Circuit, to *W. H. Macnaghten*, Esq., Register of the Nizamut Adawlut, Fort William.

SIR, Belvidere, 2d July 1820.

Calcutta Court of Circuit.—Suburbs of Calcutta, Trial, No. 1, of the Calendar of the Monthly Sessions of June 1828. Bebee Het, *alias* Muss. Barmoo, *versus* Asghur Khansamah.—Charge: Burglary and Theft, and participating in the division of the plundered property.

I HAVE the honour to transmit, for the consideration of the Nizamut Adawlut, the trial noted in the margin.

2. The prisoner Asghur was committed for trial, along with three others, who had been released, as an accomplice in a burglary committed within the suburbs of Calcutta, and for participating in the division of the plundered property.

3. I concur in the Futwa of the Kazee of this Court, which acquits him of the burglary, and convicts him of having had stolen property in his possession, knowing it to be stolen; but as the evidence proved his possession of the property at

at Colinga, within the limits of the town of Calcutta only, and not at any place within the jurisdiction of this Court; I do not think myself competent to pass sentence, and therefore transmit the proceedings for the orders of the Nizamut Adawlut.

4. I beg to remark, that Moteeram Zurgur, to whom the property was sold, and in whose house at Colinga it was found, was not committed, on the ground of his not being liable to be tried out of Calcutta. He asserted before the Magistrate, that the property was his own, and named witnesses to prove that assertion, whose examination would have rendered the evidence respecting Asghur more complete; but I did not think it necessary to postpone the trial for their attendance, being perfectly satisfied that this Court had no jurisdiction in the case.

I am, &c.

(signed) *R. Brown*, Third Judge.

(A true Copy.)

(signed) *W. H. Macnaghten*, Register.

(C.)—LETTER from *H. Shakespear*, Esq., Secretary to Government, to the Acting Magistrate of the Suburbs of Calcutta.

SIR, Council Chamber, 7th July 1829.

AT the June Sessions of 1828, three prisoners, noted in the margin, were tried and acquitted by the Third Judge of the Calcutta Provincial Court, and the proceedings in regard to a fourth prisoner, named Ashgur Khansamah, were referred for the final sentence of the Nizamut Adawlut, by which Court he was released on the 16th of July last.

Khodabuksh, Sadulullah, Shallaroo, charged with burglary and theft, and participating in the division of the plundered property.

2. As it appears that the prisoners were afterwards tried before the Supreme Court, I am directed by the Right Honourable the Governor General in Council to desire you will report whether the prisoners were transferred to the custody of the Magistrates of Calcutta, and if so, by what authority and upon what grounds.

I am, &c.

(signed) *H. Shakespear*,
Secretary to Government.

(D.)—LETTER from *J. Thomason*, Esq., to *Henry Shakespear*, Esq., Secretary to Government, Judicial Department, *Fort William*.

Fouz^{y} Adawlut, Suburbs of Calcutta,

SIR, 13 July 1829.

IN reply to your Letter to my address, dated the 7th instant, I have the honour to report the following particulars:—The three prisoners, Khudabuksh, Sadutoollah, and Challaroo, were released, agreeably to the Circuit Judge's orders, on July 5th, and Ashgur Khansamah on July 31st, in compliance with the orders of the Nizamut Adawlut. On their release they were sent by the Magistrate to the Calcutta police, that investigation might be made into their character, as they were inhabitants of the town. The Magistrate also conceived that their presence would be necessary in the trial of Mootee Ram, who had previously been sent to the police for the investigation of a crime which he was accused of having committed within the precincts of the town.

I have, &c.

(signed) *J. Thomason*,
Offi^{g} Magistrate.

—No. 18.—

V. Legislative Councils; Courts of Justice Code of Laws.

MEMORANDUM on the RECORDER'S COURT at *Singapore*, *Malacca*, and *Prince of Wales Island*, by Mr. *R. Fullerton.*

THE Revenues of these Settlements generally will be found much reduced this year, the causes of which are as follows: The Grand Jury at Singapore having made a presentment against the Gambling Farm, that item ceases of course, and reduces the Revenue by 71,200 rupees. The same cause reduces the same item at Malacca 9,598; for though the Jury did not present, the Judge in his speech declared it illegal. The other farms at Singapore were sold for the year; but for the principal one, the Opium Farm, the biddings have fallen considerably, under the idea entertained by the people, that gaming is not worse than smoking opium, and that the farm will be, like the other, presented by the Jury in the course of the year. Another inducing cause of reduction is the difficulty of punishing breaches of the Farm License. It has hitherto been and is done now by the Magistrates, *who are civil servants*; but such is understood not to be strictly legal, and fears are entertained that that mode of proceeding will be discontinued. The principal farms at Prince of Wales Island have also been sold far under their usual amount. The causes are very clear. The punishment for breaches of the Farm Regulations used to be enforced by simple application and proof before the Magistrates. This has, at Penang, been declared illegal by the present Recorder. A suit in Court is necessary in every case; and such is the difficulty, delay and expense of such a process, that the renter can hardly resort to it. Several suits were brought on last year, under the assistance of the Government Law Agent, in order to establish by a decision the legality of the tax under Act 54 Geo. III. cap. 105, as being a tax existing and in operation at the date of the Act; but they all went off before coming to the merits, on some technical informality in the process. I always anticipated a great loss and difficulty in collecting the Revenue, as the result of the first holding of the Court at Singapore before the professional Judge, because the people were for the first time to see a separate and distinct authority from the Government set up, through whom alone Revenue demands can be enforced. In the case of the lands and grounds, for example, they were all made over to the present occupants, on documents called "Location Tickets," which declared the land *subject to such terms and conditions as might hereafter be imposed.* The process going on has therefore been to call on the Location Tickets, measure the ground regularly, and then give the permanent lease, subject to a quit rent settled with reference to situation. Until this process has been gone through, it was not usual for the occupier to pay rent. The substitution, however, of the permanent lease for the Location Tickets, has been going on under the authority of the Executive Government, and of course the Revenue from the quit rents has been gradually increasing. The case is now changed; the holders of the Location Tickets and of the lands finding the legal process under the intervention of the Court a previous measure, decline receiving the leases and paying rent, and hold on free until compelled by law; and we shall probably have to file many thousand writs of ejectment, when there would not have otherwise arisen a question of doubt. Here again we are to inquire, under what rule or law are such questions to be tried? And this brings me to the explanation of the radical cause why Revenue cannot be raised in these eastern countries. On the continent of India, the Governments are invested with legislative power, and that power is exercised in prescribed form, by the enactment and promulgation of laws registered in the Judicial Department, under the term of Regulations. Those Regulations, besides providing for the forms of administering justice, define the relative rights of the Government and the subject, and prescribe the mode under which those rights are to be inferred, on the one part, maintained on the other, by application to local Provincial Courts, bound to act according to those Regulations. The Supreme Courts have no jurisdiction in any matters of Revenue, or the collection thereof. In the Revenue Department, public officers hold summary powers of enforcing, in the first instance, all demands, whether for payment of arrears, ejecting from lands unduly held, leaving the *onus prosequendi* on the party supposing himself aggrieved, distraint when no arrear is due, or ejectment from lands properly belonging to him. It is only under the exercise of the summary process that the collection of the Government Revenue in India is insured. In these eastern settlements the Government has no power of framing those legislative provisions. There does not, therefore, exist any distinct and clear definition of relative rights, or prescribed mode of enforcing

enforcing and preserving them. There are no Provincial Courts acting under local law. Government posseses no power of enforcing its demands. The Court administering justice as a Revenue Court is a King's Court, framed on the English model, and taking the common law of England as its guide. Questions of Revenue, therefore, whether arising from land or excise, fall to be tried under principles that have no relation or resemblance to the local situation of the country and its inhabitants. Before demands can be enforced, legal process in all the English forms must be resorted to; writs of ejectment must be sued for; suits entered for arrears; delays, expenses, doubts and difficulties arise that render it easy for the people to evade the payment of all demands, and induce the officers of Government rather to abandon the demand, small in individual cases, though considerable in the aggregate, rather than encounter all the difficulties and go through forms which they cannot understand. Let us suppose, for example's sake, that the Supreme Court at Calcutta were at once declared the only Revenue Court; that every arrear of Revenue, every question resulting from its collections or the occupation of land, were to be tried there in the first instance, under all its forms; would it be possible to realize the land Revenue? Yet this in a small way is exactly our case. Singapore, indeed, is of recent acquisition, and the titles hitherto given have been in English form; but even at Singapore there is much land occupied without any title whatever; and unless something is done by regular enactment, possession will make a title, as it has done in this Island, from the neglect of the local authorities. But how are we to regulate decisions at Malacca? There the sovereign right is one-tenth of the produce; the Dutch made over the right to certain of the inhabitants more than 100 years ago. This Government, by way of insuring increase of cultivation and introduction of population, redeemed the right. How are we to levy the tenth, if refused? The land tenures at Malacca bear no analogy or resemblance to any English tenure; yet by such they must, in case of doubt, be tried. Regulations adapted to the case have indeed been sent to England, but until local legislation is applied, and the mode of administering justice better adapted to the circumstances of the place, it seems to me quite useless to attempt the realization of any Revenue whatever.

Prince of Wales Island, 18 May 1829. (signed) *R. Fullerton.*

— No. 19. —

LETTER from the JUDGES of the SUPREME COURT at *Calcutta* to the GOVERNOR GENERAL in COUNCIL, &c. &c. &c.

Garden Reach, Calcutta, 2 October 1829.

RIGHT HONOURABLE LORD, AND HONOURABLE SIRS,

THE important communication which was made to us by your Letter of the 14th of July, and by the numerous Papers which accompanied it, has required, up to this time, all the attention which, consistently with our duties in the Supreme Court, we have had it in our power to give; and in order that our views might be more fully and freely stated, we have thought it best that each of us should state his own separately. If any part of them should require further explanation or development, we shall be happy to receive any additional communications which it may be your pleasure to make; or, if the expression of our concurrence in measures of the Government be desired, we shall be at all times willing to submit any representations to the authorities at home which may be in accordance with our opinions, as they are expressed in the documents which accompany this Letter.

We are, &c.

Cha^s Edw^d Grey.
John Franks.
Edw^d Ryan.

V. Legislative Councils; Courts of Justice; Code of Laws.

— No. 20. —

MINUTE by Hon. Sir *Charles E. Grey*; dated 2 October 1829.

1. THE propriety of submitting to the authorities at home the formation of a Legislative Council in India, is the main subject on which the Judges are invited to give their opinions by Letter from the Governor General in Council of the 14th July 1829. At present, three distinct powers of legislation are vested by express enactment in the Governor General in Council, and the Governors in Council of the other Presidencies. The 13 Geo. III. c. 63, ss. 36, 37; the 39 & 40 Geo. III. c. 79, ss. 18, 19; and 47 Geo. III. sess. 2, c. 68, ss. 1, 2, purport to empower the Governor General and Governors in Council, for the good order and civil government of the settlement at Fort William, Madras, and Bombay respectively, and all places subordinate thereto; to make any regulations not repugnant to the laws of the realm, and to enforce them by reasonable fines, forfeitures, and corporal punishments: but such regulations are not valid, unless the Supreme Court of the Presidency will register them. An appeal lies against them to The King in Council; and even without appeal, they may be set aside by His Majesty, under his sign manual. The 21 Geo. III. c. 70, s. 23, and the 37 Geo. III. c. 142, s. 8, the 39 & 40 Geo. III. c. 79, s. 11, and the 47 Geo. III. sess. 2, c. 68, s. 3, give a power to the Governor General in Council, and Governors in Council, which in the first Statute is limited to the regulation of Provincial Courts, with a proviso that the expenses of the suitors shall not be increased. But in the 37 Geo. III. c. 142, s. 8, the same power is mentioned as a power of making "a regular Code," affecting the rights, persons and property of the natives and others amenable to the Provincial Courts. These laws also, I suppose, may be disallowed by His Majesty in Council; but they are not directed to be registered in the Supreme Court, and in practice, I apprehend, are from time to time altered, according to orders from the Court of Directors and the Board of Commissioners for the Affairs of India. Lastly, by the 53 Geo. III. c. 155, ss. 98, 99, 100, the Governor General and Governors in Council in their respective Presidencies, with the sanction of the Court of Directors, and of the Board of Commissioners, may impose duties and taxes within the towns of Calcutta, Madras, and Bombay; for the enforcing of which taxes, regulations are to be made by the Governor General and Governors in Council, in the same manner as other regulations are made; which manner, as I have shown above, is twofold; and the Statute supplies no further directions to the Governor General and Governors in Council to guide them in their choice between the two courses. For the levying of fines and forfeitures for breaches of these regulations, the Advocates General of the Company are directed to file informations in the Supreme Courts and the Recorder's Court at Bombay; but the Recorder's Court has since been abolished; and in the Letters Patent by which the Supreme Court has been substituted in its room, it is declared that the Court has no jurisdiction in any matters of Revenue either within or beyond the limits of the town of Bombay. Besides these three powers of legislation, a general power of altering the Revenue and of imposing new taxes has been exercised within the provinces, and is alluded to more than once in Acts of Parliament; but as there is no Act which expressly confers it, I suppose it rests on the grant of the Dewanny, and on those Statutes by which general powers of Government and of ordering the Revenues have been given or continued to the Company for limited periods.

See also 39 & 40 Geo. III. 79. 20.
(signed) *C. E. G.*

If the 21 Geo. III. 70. s. 23. applies to them generally, they may not only be disallowed by His Majesty in Council, but amended.
(signed) *C. E. G.*

2. These powers cannot be said to be remarkably well defined. The exercise of one of them has been extensive, beyond what seems to have been at first foreseen by the Legislature; and it is not that which in 1773 was designed to be the only one, which has in fact been the most considerable. That which was established by the 13th Geo. III, c. 63, has been almost a barren branch; and that which was given in 1781 expressly for the purpose of making limited rules of practice for Provincial Courts, has produced a new and extensive system of laws for a large portion of the human race. I do not mention this with any purpose of blame. I do not doubt that in most respects the results have been beneficial, and perhaps the course which has been pursued could not have been avoided; but it may be doubted whether the Parliament would approve of its being infinitely extended exactly in its present direction. That large powers of legislation must continue to be exercised in India, will scarcely be questioned by any one who will look into the many

many volumes of regulations which have been made by the Governor General in Council in the last five and thirty years. What a variety of subjects are comprised in them to which it would have been a hopeless task to have solicited the attention of the British Parliament! But the question is, to what extent and in what manner may a subordinate power of legislation be best established? The most limited form in which this question presents itself, is, whether it would not be better that those regulations, which not only the law, but usage, now requires to be registered by the Judges of the Supreme Court, should be passed in a Council at which they or some other persons appointed by the Crown or Parliament should assist; and I have not much hesitation in saying that it would be better. It is desirable to keep the judicial branch of Government in a great degree distinct from the legislative; but the separation of these two is not of so much importance as that of the judicial from the executive; and a complete insulation of any one of the three persons is a refinement of government which has never yet been attained, probably never will be, and if it were possible, would not, perhaps, be beneficial. The King, who is an integral part of the British Legislature, can, of himself, in almost any case, take away the effect of a sentence of any Court of criminal jurisdiction in England. The House of Lords, which is another integral part of the Legislature, is also the highest Court of appellate jurisdiction, and has a capacity of original jurisdiction in some criminal cases. By bills of attainder and pains and penalties, the whole Legislature at times has acted with all the powers of a Court of penal Justice, and with some more. The Welsh Judges, the Master of the Rolls, the Master in Chancery, and the Judges of the Ecclesiastical and Admiralty Courts may sit in the House of Commons; the Lord Keeper and all Judges who are Peers sit in the House of Lords. The Twelve Judges are called upon to declare the law in that House, as well as in the Three Courts at Westminster; and they can scarcely so restrict their opinions as not to influence in some degree questions of expediency as well as law. The King in Council is, for many purposes, both the Legislature and the Appellate Court of Judicature for several of the Colonies: and in Canada and Ceylon and New South Wales, and at the Cape of Good Hope, I believe that Judges are members of Legislative Councils constituted under recent Acts of Parliament. It seems to me, therefore, that there is nothing to prevent the Parliament, if it should think fit, from imposing upon the Judges of the Supreme Courts in India the duty of assisting to form the regulations, on the legality of which they are even now required to decide before they have any force. For the expectation that some inconveniences might be prevented, and that advantages might be obtained by the Judges assisting in this way, many reasons are to be found in the lame results of the existing arrangement; in the questionable legality of some of the regulations, and especially in the history of the Stamp Regulation, which must be fresh in the recollection of the Government: but I am aware also of certain inconveniences which would be peculiarly connected with the introduction of the Judges of the only Court in which British law is administered into a Legislative Council, which must of necessity be subordinate not only to British legislation, but in many respects to British law. Incongruities of relation between the ordinances of any subordinate Legislature and the primary laws of the United Kingdom might be overlooked or misapprehended in a Council, even though Judges might belong to it; and these being afterwards ascertained by the keenness and vehemence of public censure, the Legislative Judges might have as Judges to condemn what as legislators they had sanctioned or recommended. In other instances, where the legality of a regulation might be merely doubtful, they would be suspected of an inclination to support the work of their own hands. To avoid, at all events, the possibility of the Judges being compelled against their will, by a majority in the Council, to pass any regulation which might be justly liable to such objections, it would seem to be almost necessary that they should retain amongst them that power of prevention which they now possess by means of their right to refuse registration. If the Supreme Court, however, were to become a Court of only appellate jurisdiction, there would be less objection than at present against any legislative functions of the Judges. Upon the whole, I express my opinion, that it would be better that the Judges should assist in Council in passsing regulations, than that they should have only, as at present, the right of directing or forbidding the registration of them; but that in some way or other they ought, in that case, to retain the power of preventing the Council from passing regulations incompatible with the basis of any laws which, as Judges, they might afterwards have to administer.

3. This opinion, inasmuch as it applies only to those regulations which in usage have been confined to the town of Calcutta, covers but a small portion of the

V. Legislative Councils; Courts of Justice; Code of Laws.

subject offered for our consideration. Ought there to be in India one or more legislative bodies for all India? What limits ought to be put to the power? Should it deal with every thing which is the subject of law? Should it legislate for all classes of persons? To what review should its ordinances be subjected? Of what persons should it consist? By whom should they be appointed? For what periods of time? What rights and powers should each of them possess?

4. That there must be a power in British India of passing some sort of regulations for every part of it, seems to be indisputable. The first and most obvious limit of such a power is, that it should not make any ordinance inconsistent with any Act of the Imperial Parliament applying to India. Another is, that the power must not extend to the alteration of any part of the unwritten law of the British Constitution, on which depend the relations of British India or its people with the United Kingdom. It must not in any way vary the law of treason, or affect any rights of the Crown or of Parliament, or those which may be derived by any foreign state from treaties entered into by them with the British Crown. Some other specific limitations would probably occur upon further consideration of the subject; but I have no reluctance to declare my opinion, that by a general and vague prohibition against enacting any thing "repugnant to the laws of the realm," an Indian Legislature must be so embarrassed as to be incapable of acting with any good effect. Those words, which are employed in the 13 Geo. III. c. 63, s. 36, had long before been used as limitations of legislative powers granted to Governments in the American and West Indian Colonies; but in some instances they have been afterwards abandoned; in others they have been disregarded; and in others they have been productive of embarrassment and confusion. They are so loose that no two lawyers construe them in the same sense. Some will affirm that any wide difference is a repugnancy; others, that no two laws which can exist are repugnant to each other; some, that we may not make regulations *præter legem*; others, that they may be made *præter*, but not *contra, legem*. These points were contested before the Privy Council upon Mr. Buckingham's appeal against the Press Regulations; and after the Supreme Court at Calcutta and the Privy Council had decided that the regulation at Calcutta was not repugnant to the laws of the realm, it was decided that it would be repugnant at Bombay by Sir Edward West; than whom there never was a Judge of purer integrity, nor usually of a more accurate perception in matters of law. If we construe these words as meaning only an incompatibility with some primary law or some statute of the United Kingdom, applying to the place in which any new regulation may be proposed, it is not easy to bring within the limitation which they would impose, the laws passed in the American Plantations and in the West Indies, by which the slavery of negroes was constituted, and Christian men and women, down to a very recent period, were bought and sold in markets, and were either inherited as real estate, or were bequeathed by will as part of the live stock of the testator. Yet those laws were not only permitted to stand, but on several occasions, in the course of the eighteenth century, were taken by the British Parliament as the basis of additional laws; and all persons are bound to consider that they were not incompatible with the laws of the realm. It has for some time been known to the Parliament that in this country the Government have felt themselves obliged to permit women to burn themselves to death, and others to assist them. It is clear also that no legislation for India could at present be applied to the Mussulman or Hindoo population without acknowledging the usage of polygamy amongst them, and the rights of inheritance resulting from it. Other instances might be adduced, but these, perhaps, will be sufficient to show, that the due consistency of Indian law with the law of the United Kingdom cannot be provided for by loose and general prohibitions of repugnancy between the two; but that it ought to be secured by specific limitations of the subordinate legislative power.

See Black. Comm. 108. Rymer's Fœdera, xvii. xix. Edward's Hist. of the West Indies, vol. ii. p. 321. vol. iii. p. 288. Stoke's Colonial Law, 14. 21, 22, 23. 27. 155. Campbell, v. Hall, 20. St. Tr. 249. In the American Colonies, the words, "as near as conveniently may be agreeable to the laws and statutes of the Kingdom," were in some instances substituted. Edward's Hist. of W. I. vol. iii. 364. Stoke's Colonial Law, 251.
(signed) *C. E. G.*

5. It seems to me desirable, that within this Presidency, at least, there should be but one Legislative Council, and that its power of legislation should extend to all persons as well as places. I do not mean that it would be possible at once, or within a given time, to subject all persons or places to the same law; but approaches might be made towards that distant end: and in the meantime the troubles produced by different streams of law running in adverse directions within the same channels, might be more easily managed than at present. The maintaining of British

British law, and the rights of the British Crown, and of British persons, by one sort of legislation, whether it be in or out of India, and of Hindu and Mahomedan institutions and the supposed interests of the Company, and of the Hindu and Mahomedan inhabitants of the province by another, only perpetuates the confusion and disorder of the system which comprehends these unreconciled elements. Rather than that so many sorts of law should continue to work together in the same places, I would prefer to see each Presidency divided into two or more districts, in each of which there should be a different but a single and uniform system of Regulations. A district extending fifty or sixty miles round Calcutta in every direction might be a country large enough at present for the permanent residence of any British capitalists or adventurers who might be permitted to establish manufactories, or to superintend any other speculation or establishment; yet not so large but that a journey of less than four-and-twenty hours would bring a person from its extreme limit to the capital. Within this circuit might be established for all persons the law which is now administered by the Supreme Court. It is far from being merely English law, and is the only law in Calcutta whether for British persons, Hindus, Mahomedans, or any others. In the bulk of the provinces, the Regulations of Government, and that system of law which is administered by the Sudder Dewanny and Nizamut Adawluts, might be the sole law of all persons who might choose to be the inhabitants thereof; and in other provinces, if it were necessary, some modification of this latter system, or martial law, if severe necessity should require it, might be established or discontinued by proclamation. I am aware that the first thought which will strike many persons upon this suggestion will be that of "the Irish pale;" but from the difference of the time, place and circumstances, and improved principles of Government, I should expect the immediate consequences to be very different. I offer the suggestion only as something less inconvenient than the present state of the laws in India, and as a temporary expedient; and if it were to be adopted, it would be necessary to provide, by specific Regulations, for the execution within each district of the process of the Courts of the other. An active and efficient Legislature, with powers extending over all persons and places, would make it unnecessary to resort to any such measure; but, on the other hand, it may be doubted whether the present state of things, which I believe to be unexampled in the history of the world, can last much longer. Throughout the greater part of India there are to be found some individuals at least of four distinct classes, each of which is supposed to live under a distinct system of law, and to have different rights and different duties, but none of them accurately defined. There are persons born in the British Islands, Hindus, Mahomedans, Asiatic Christians, and besides all these, there are in many parts, foreigners and subjects of Great Britain, who have been born neither in the British Islands nor in India, as to whom, I believe, there is no one who, consistently with usage, can say, with any just confidence, what law it is which applies to them. Hitherto it has been possible to make a shift; but as the native Christians, British and Colonial persons, and foreigners shall increase in numbers and pervade India, a result which must gradually take place, matters may be brought to such a pass as would scarcely be tolerable.

6. By every one who is at all acquainted with India, it will be felt at once, that in forming a Legislative Body, all notions for a time, beyond the foresight of man, must be excluded of any election by any class of the people, and for the present, of the admission of any Indian persons. The utmost which can be expected now is, that a Legislative Council should include persons of the British class, who would feel it to be their duty and inclination to look to the preservation, in their due proportions, of the rights of the several bodies politic in whom the sovereignty and powers of Government are vested, and to the promotion of the common interest of all classes of the people, and of the several interests of each, and who might be expected to be able to supply the various information which would be required in legislating for such a subject matter, and such complicated relations as India and its people present. There might be first the Governor General and his Council. Secondly, either the existing or some former Judges of the Supreme Courts, or some other English lawyers; and these ought, not in name only, but in reality, to be selected by the Crown. Thirdly, the Bishop of Calcutta, or in his absence, the Archdeacon, unless some of the considerations, which I have before suggested, should be thought to be inconsistent with the Bishop's taking a part in the general proceedings of the Council. Fourthly, one or more of the civil servants,

V. Legislative Councils; Courts of Justice; Code of Laws.

vants, learned in Mahomedan and Hindu Law, and familiarly acquainted with the Government's Regulations, the habits of the Natives, and the institutions through which the provinces are governed; these might be nominated from time to time by the Governor General. Lastly, it seems to me desirable that the Governor General should have a power and option of appointing annually one merchant or planter, being a natural born subject of the King, of substance and respectability, and who should have resided at least five years in India. Under these arrangements there would probably be found in every member of the body respectable talents and acquirements; in all (unless it might be some one newly arrived in the country) a considerable knowledge of Indian affairs; but especially in two out of the four Members of Council and in the other civil servants, by whom also, and by the Judges or English lawyers, sufficient legal information ought to be supplied; each of the others would bring his peculiar store of experience and knowledge. In all there might be a tolerably impartial regard to the interests of all classes of persons; but as the Government of India is at present constituted, it might be expected, perhaps, that it would be the inclination, and peculiarly in the power of two of the Members of Council and of the other civil servants, to watch over the rights and interests of the Hindu and Mahomedan population and the East India Company; of the Judges or English lawyers to guard those of the Crown and of the British population, of which the trading interests might be further attended to by a member appointed annually from that class. In addition to a general charge of Ecclesiastical affairs, and of Christian institutions for the promotion of knowledge and religion, the Bishop might be expected to extend his especial care to the class of native Christians. The Governor General would regulate the whole; and he alone ought to have the power of appointing the meetings of the Council for Legislative purposes, and certainly ought to have a "*veto*;" but for the reasons stated in Paragraph 2, it seems to me that the Judges, or other English lawyers appointed by the Crown, ought amongst them to possess a similar power, or that of suspending a Regulation until the authorities in England could be consulted in cases in which any primary law of the United Kingdom should appear to be violated. Indeed, whilst the Government of India rests upon its present basis, that of a temporary possession of the territories and revenues of the East India Company, it is neither probable nor desirable that the Crown should ever consent that the members of a Legislative Council appointed by the Company, should have the power of altering the constitution of the King's Courts, in opposition to the opinion of the Judges. Whatever may be the use of the Supreme Courts in other respects, their existence, whilst the Government of India is moulded in its present form, is preservative of the dormant rights of the Crown; a vast and delicate matter which I do not wish to bring into discussion.

7. The most important, perhaps, of all considerations connected with this subject is that of the review to which all the acts of such a Legislature ought to be subjected from time to time, and of the control to which it ought to be liable at all times. It is an extremely inconvenient plan to send the scheme of a law to take two voyages of 14,000 miles each, and to be approved of in England before it is to have effect in India; but it is still worse if it has subsequently to be tendered in India for registration. It might be provided, that every act of an Indian Legislative Council should, within one month, be sent to the Court of Directors and the Board of Commissioners, and that in the *next* Session after the receipt of it in England it should be laid before Parliament; and that the Court and the Board should have the power of repealing it within one year from the time of its having been made, but with a proviso that all persons should be saved harmless for any acts done under the Regulation before notice of its repeal should have been given in some specific manner. But a far more important and beneficial provision would be, that the Indian Council should, once in 7, 10, 14 or 20 years, form into one body of laws, and submit to Parliament the whole of the existing Regulations, in order that they might be sanctioned or amended. It would be desirable also to provide for the universal and accurate publication in India of all Regulations as soon as they should be passed; which perhaps would most easily be accomplished by confining to some one printing-press the privilege, that only the Regulations printed at that press should be received as evidence or taken notice of in Courts of Justice, to which privilege, conditions for a sufficient and proper publication throughout India might be annexed.

8. As

8. As the greater number of the papers which accompanied the letter of the 14th of July relate to the constitution and to some of the proceedings of the Supreme Courts of Judicature, and many parts of them are written with great misapprehension of the subject, and in a tone of complaint, although the Governor General in Council has not required that the Judges should reply to them, I conceive that it must have been desired that they should do so; and I will not pass them over without making an effort to produce a clearer understanding of the matter, for which purpose it will not perhaps be necessary that I should extend my remarks to any other documents than the Minute of the 19th February, and that in the Secret Department, dated April 15th, 1829. The manner in which the Judges at Calcutta are spoken of, not only in the letter of the Governor General, but in that latter Minute, is in the highest degree gratifying to them; but they are a little at a loss how to separate entirely a part of the complaints which are made in the Minute of some of the acts of the Court from an implied censure of those by whom the Court is held. The case of William Morton against Mehdy Ali Khan, which was tried in the last year, is described as an assumption by this Court of a jurisdiction which the Legislature did not intend to confer; and it is said that a false allegation of debt was the ground of the action. It cannot be necessary for me to explain that, even if the affidavit was false, it neither shows any fault of the officers of the Court, nor any defect in its constitution. No Court can be so constituted as to be exempt from the evil consequences of perjury. But in fact there is nothing which warrants the assertion, either of the plaintiff's perjury, or of the Court having exceeded its jurisdiction. An affidavit of the debt is on the file of the Court, and has never been shown to be untrue. William Morton was nonsuited, not because he could not prove the debt, but because he could not meet some evidence of Mehdy Ali Khan's that the trade in Calcutta, which had been alleged to make him liable to the jurisdiction, belonged not to himself, but had been given by him to a young nephew, who lived in his house. The trial of that question left on my mind a very strong impression that the defence was a contrivance, and that the trade, which was very valuable and extensive, and in the course of which several ships had been insured at offices in Calcutta, always had been, and still was, the trade of Mehdy Ali Khan himself. An information was afterwards filed against William Morton by the Advocate General of the Company for a conspiracy, on which he was rightly acquitted. The objection made in the Minute to the jurisdiction of the Court is that Mehdy Ali Khan was not a resident inhabitant of Calcutta. It is not always easy to say with certainty what the Legislature has meant in the Statutes relating to India, but I have some confidence that even in the 21 Geo. III. c. 70, s. 17, it was meant that natives carrying on trade in Calcutta, but residing in some other place under British Government in Bengal, Behar or Orissa, should be liable to be sued in Calcutta upon their contracts, express or implied. The Act of the 21 Geo. III. c. 70, was preceded by that of the 21 Geo. III. c. 65, which in s. 28. prohibits British subjects from residing, without special license in writing, any where except at one of the principal settlements, or within 10 miles of it; and I can scarcely suppose that it was intended to put even those British persons who might establish themselves at Calcutta by leave of the Company, in such a position that they could have no legal remedy against any native trader or banker of Calcutta who might choose to live on the outside of the Mahratta ditch, unless by bringing an action in some Court, which at that time might have been really "Native," and held under some Mahomedan Judge, and to which, if it should have been at more than 10 miles distance, British persons had not even the power of resorting, except by obtaining a special license in writing, which they had no right to demand. If the word "inhabitants" was used advisedly in the Statute of 21 Geo. III. c. 70, it must have been known to those by whom it was inserted, that its meaning in the English law is not confined to residents, and I should suppose it to have been precisely for that reason that it was chosen. Lord Coke long ago had taught, that even as early as the Statute of Bridges, the word had been applied to persons who might be residents in foreign countries. The Committees of the House of Commons in cases of controverted elections before the 21 of Geo. III. must have had the legal import of the term more frequently under consideration than that perhaps of any other; and at a more recent period Lord Eldon has explained that the construction of this word in any Statute must always depend upon the nature of the subject, and that inhabitancy may refer to residence, or be wholly independent of it. At any rate, he must be a bolder Judge than I am, who at this time will declare its meaning, in the 21 Geo. III. c. 70, to be that of residence only. It has always been a common

V. Legislative Councils; Courts of Justice; Code of Laws.

practice with the natives to carry on an extensive trade, both foreign and inland, and to deal in money and securities for money in Calcutta, by the means of servants who are not worth a farthing, whilst themselves reside at Moorshedabad, Dacca, Patna, Benares, Furruckabad, or elsewhere, and any native resident at Calcutta may of course cease to be so at any moment at which he may find it convenient to be divested of that character. There is no Court at Calcutta which has any means like the Superior Courts at Westminster, when actions are commenced in them, of providing for the trial in the provinces; so that the mercantile persons in Calcutta might have to ask licenses to go about to half the Zillah Courts of India if they were to be obliged at present to sue those with whom they deal only in the neighbourhood of their dwelling-places. To have construed the word "inhabitants," however, in the declaration against Mehdy Ali Khan in the limited sense, beyond which it seems to be thought in the Minute of the 15th of April that it cannot be extended, except by some operations connected with the art of magic, would not only have been to establish a precedent at variance with the principles of justice, the rules of construction of the English law, and the ordinary course of the law of merchant in most of the civilized parts of the world, but what is more to the point, it would have been an abrupt and unauthorized abolition of the established practice and unvaried usage of the Court in which the declaration, on the faith of that usage being permanent, had been filed. I do not deny that natives residing at a distance are put to inconvenience by the application to them of the word "inhabitants." When the 21 Geo. III. c. 70, was passed, the writs of the Supreme Court ran only into Bengal, Behar and Orissa; since that time the Legislature and the Court of Directors have annexed vast territories to the Presidency, and put them on the same footing as the older ones. Actions may be commenced in the Supreme Court against persons who are resident at an immense distance. The Court has no means of providing a trial any where except at Calcutta; and there is only one Sheriff for a bailiwick of more than 1,000 miles diameter. I am not contending that we are placed in convenient circumstances, but that the Court has not perverted the law.

9. The second case brought forward in the Minute of the 15th April is one which has not been before the Judges, but in which, I believe, a British partnership in Calcutta, upon making large advances to another British firm, had taken from them a bond and warrant to confess judgment, on which judgment had been entered, and when the debtors became insolvent, the judgment creditors took out execution, and the Sheriff seized all the property of the insolvent partnership on which he could lay his hands, including some stock in trade, indigo factories and other property in the provinces. Three objections are made in the Minute against these procedings; first, that the property taken in execution lay at a distance from the residence of the British judgment creditors, whilst there were native creditors who lived near at hand: secondly, that some of the property taken by the Sheriff had not been paid for by them, defendants: thirdly, that the awe of the Supreme Court prevented the Collectors, Judges or Magistrates of the neighbourhood from interfering with the Sheriff in the execution of his duty. I am at some loss how to answer these objections, as they apply to the Court, but certainly not on account of the reasonableness of them. As to the last of them, I can only say, that I hope a due respect for the Court may be equally effectual in other cases of the same nature. The proceedings, as far as they are stated in the Minute, or as I have any knowledge of them, were in every respect regular, and except as to the amount of the debt, ordinary. At the time of their taking place, no law of bankruptcy or insolvency had been introduced into India; and of necessity each creditor of an insolvent firm had to take care of himself; the principles of the Bankrupt Laws cannot be acted upon except where the laws exist; and it would have been found to be an extremely inconvenient substitute for them, if any one had possessed the power of deciding that the creditors should be paid in the order of their vicinity to the dispersed property of the insolvent, or that a writ of execution against moveables should itself be immoveable or restricted to the limits of the town of Calcutta. Yet, if this part of the Minute does not point at some such expedient, I am unable to perceive what was meant to be the complaint. Power is given to the Court to hear and *determine* suits. What sort of a determination would it be if the defendant, by removing himself and his goods and chattels, during the progress of the suit, beyond the limits of the town of Calcutta, might make execution impossible, and the judgment nugatory?

10. The

10. The third is a charge of a graver complexion, if it were to be taken according to what the letter of it would imply; but I am satisfied that the Member of Council by whom the Minute was written, did not advert at the time to what was implicated in this part of it. The case adduced is, that of the King against Khodabuksh and three others, which was tried by me at the fourth sessions of Oyer and Terminer for 1828. As this has been the subject of a communication from the Judges to the Government and to the Board of Commissioners for the Affairs of India, the Members of Council are now more fully informed of it than when the Minute was written; but there is some reason to regret that upon erroneous information respecting matters which might have been easily ascertained, and in a document which, at the time when it was written it was not likely I should ever see, there has been involved against me an imputation of "encroachment," and that I put four men upon their trial on a capital charge, "in order to establish a principle," which is believed to be contrary to law. It is now known to the Governor General in Council, that I had never heard of the prisoners or their crime until after the sessions had begun, and long after they had been committed to the great gaol for trial, and though I read the depositions at the time, I do not now recollect what Justice of the Peace it was before whom they were taken. I was bound to deliver the gaol, and there was no method which I should have thought myself justified in pursuing by which I could have avoided to put the culprits on their trial. I might indeed have quashed the indictment by deciding that the averment was bad in law, which stated, that persons professing the Mahomedan or Hindu religion were subjects of the King, or I might have directed the Jury, that the word "subjects," in the 26 Geo. III. c. 57, and in some others, was supposed by many persons to have a meaning peculiar to the Statutes respecting India; that the evidence did not show the prisoners to be within that meaning, and that except as to persons included by that term, the Provincial Courts now claimed to have an exclusive cognizance of crimes committed beyond the boundary of Calcutta; but as neither the Advocate General of the Company nor any one else defended these prisoners, I must have taken on myself the whole of the heavy responsibility, not only of allowing, but of making this complicated defence, which would not precisely have coincided with my own opinion, and in such circumstances I am inclined to believe that those in England to whom the case will be submitted, will think that I pursued a more considerate and prudent course in referring points so doubtful and so weighty to His Majesty in Council. I am informed by the letter of the Governor General in Council, that three of these persons had been tried and acquitted in a Provincial Court, and there was some mention on the trial of the important fact of their having been before a Provincial Court, but without a plea of acquittal. I could not enter into any evidence of it, and I had no judicial information whether any of the parties had ever been tried or arraigned, nor any legal ground upon which I could have directed the Jury to acquit any of them; for that reason my impression was that the Provincial Court had merely disclaimed the cognizance of the case in the form in which it had been brought before them.

11. The only other objection which is stated against the proceedings of the Court at Calcutta is, that in compelling the performance of its decrees as a Court of Equity, it sequesters the rents and profits of land in the provinces, or appoints Receivers of them; and although it is admitted, that this is a power which has so long been exercised that it cannot now be disputed, it is said that an Advocate General has been of opinion, that the Legislature did not intend to confer the power, but that it has been "assumed;" and it is added, that, by the appointment of European officers of the Court as Receivers of rents and profits of estates in the provinces, the Regulations of the Government for the administration of the provinces are set at naught. The Supreme Court, under the 18th clause of the Letters Patent of 1774, is a Court of Equity, and is directed to compel obedience to its decrees in the same manner as the Chancery does in England; whatever questions there may be as to the extent of the jurisdiction of the Court of Equity in any other respects, it is certain that full power and authority to hear and *determine* suits against the inhabitants of Calcutta, respecting their inheritance and succession to lands and rents, is expressly declared to be in the Court by the 21 Geo. III. c. 70, s. 17, and in terms which make it at least questionable, whether the jurisdiction is not exclusive of all others. The most numerous and important cases which have come before the Court, as a Court of Equity, have been suits instituted by Hindus for the partition of family property. When a bill is filed for this

this purpose against any one liable to the jurisdiction, and who is the manager of such property, from which he excludes his coparceners, and which consists principally of Zemindaries or Talooks in the Mofussil, in what other way could the Court determine the suit than by a Commission of Partition; or in what other way could it secure for the family their share of the rents and profits during the long progress of an equity suit, than by appointing a Receiver? It cannot be seriously meant as a more easy and convenient proceeding, that a suit should be instituted against an inhabitant of Calcutta, in each Zillah in which any of the Talooks may be; or even that this Court, after having declared the rights of the parties to a partition, should direct them to bring a second suit against the defendant in any one other Court, and take their chance of having the same thing decreed over again with more effect? But, even if this could be maintained as expedient, it is beyond all doubt that, according to the existing law, the Supreme Court, as a Court of Equity, must attach and imprison the person of a defendant for disobedience of its decrees or orders; and if they should thus confine in gaol the manager of a family property in the Mofussil, is it not necessary that they should appoint some one to look after it, if it were only for the payment of the revenue? If the suggestions of the Minute point to any one course rather than another, it is one which would leave in the gaol of Calcutta the manager of property, respecting which the rights of numerous persons might have been declared after a long and expensive litigation, but which, on the failure of the regular payments of the revenue, would be sold to the highest bidder by the Collectors of the different districts in which the lands might be, and the surplus would remain in the hands of the Collectors, to be got at by those entitled to them in the best way they could. Does the Member of Council by whom the Minute was written believe, that the Collectors would or could apportion the surplus, on the mere production of the decree of the Supreme Court, in such a way as to give their rights to the parties; or does he desire, that in such cases the Collectors should be made defendants in the equity suit by a supplemental bill? European officers have never been sent to reside on estates so situated, but have managed them through native agents, and cannot by the rules of Court be appointed, except where there is no other fit and proper person to take charge. This part of the jurisdiction of the Court is exercised as the Charter directs, in the manner in which the Court of Chancery in England effects a partition, in the only manner in which at present a suit for a partition could be determined, or in which signal inconveniences and contradictions could be avoided; and if Regulations have been made by the Government subsequently to the Charter of 1774, and to the 21 Geo. III. c. 70, which are incompatible with them, it may be worth while to consider whether it is the Court which sets at naught the Regulations of the Government, or the Government which has forgotten the lawful powers of the Court.

12. The foregoing cases being the only ones stated in the Minute in which the Court at Calcutta is concerned, they are perhaps the only ones on which I am entitled to speak with confidence; but I beg to add, that, as far as my knowledge extends, the censures of the proceedings of the Courts at Madras and Bombay are, in most respects, equally open to observation. Of those at Bombay which have been the subject of an appeal to the Privy Council, it would not become me to express any opinion in an official document; but as I was a Judge at Madras for nearly four years, although of the cases which are cited from that Presidency one was entirely, and another almost entirely determined before I took my seat in the Court, I believe that I am able to fix both of them, and the practice of the Court in granting probates and administration to natives, in a juster point of view than that in which they are placed in the Minute. It is very possible, however, that I may be inaccurate in some particulars, as I can speak only from recollection, and, in most instances, merely from the information of others. All the Supreme Courts are directed by their charters to accommodate their process to the circumstances of the people and the country. This has been done in more instances than that of granting administration to natives. One instance in which it has been done beneficially at Madras is, that orders for the maintenance of native widows are made summarily upon petition, and without any suit in equity; and at Calcutta it was long the practice for the Judges to decide many disputes amongst natives out of Court, and by a summary award. The same considerations which led to such proceedings induced also the practice of allowing natives to take probate or administration, though the Courts never required them to do so; and this permission has tended very much to their ease and convenience in many respects. If a representative

sentative of a deceased native wants to collect assets from an inhabitant of Madras, or from the officers of the Company, or any other British subject, he is often enabled, by obtaining letters of administration, to avoid an equity suit, which would be his only other mode of proceeding. The British Commissioners at Madras, for the payment of the Nuwaub of Arcot's debts, refused to make payments to the representatives of natives without letters of administration; and though the Court would probably have compelled them to do so, there might have been some hardship in obliging the claimants to proceed by suits in equity. It was upon a refusal, I believe, by the Treasurer of the Government to give him the benefit of Government securities which had been held by his father, that the Nuwaub of Masulipatam found it necessary to apply either for probate or administration to the Supreme Court at Madras. If he had not done that, he must have filed a bill in equity, and in either case must of course have submitted himself to the jurisdiction of the Court, as to all questions connected with the property for the obtaining of which he had applied to the Court, and which it was his object to take out of the hands of a British subject, against whom all claimants had a right, whilst the assets remained with him, of instituting suits in that Court. There may be differences of opinion whether it has been, on the whole, beneficial and right to permit natives to take letters of administration, or it may be thought, that when such letters are granted, the best way of making the parties liable to the jurisdiction would be by their entering into a bond to that effect, which would apprize them of the extent of the liability; but I conceive that there can be no difference of opinion as to the justice or necessity of the rule, that every party who asks for, and makes use of any process of a Court whatever, it may be for the purpose of obtaining property which he could not obtain without it, must submit to the jurisdiction of the Court in all claims and questions which may arise as to the same property, before its absolute confirmation to him. The refusal of the Treasurer made it necessary that the Nuwaub of Masulipatam should proceed, in the Supreme Court, in one way or another; and in whatever way he had proceeded he must have submitted to the decision of the Court, as to all claims upon the property which he should have brought into question before the Court. One of the cases, I believe, which is alluded to as having occurred at Madras, is that of Syed Ali and others, against Kullea Moollah Khan and the East India Company, of which the main features were, that the Nuwaub of the Carnatic having formerly granted a Jaghire to the father of Syed Ali and Kullee Moollah Khan, questions arose, on the death of the father, whether the Jaghire reverted to the British Government, which had superseded that of the Nuwaub; whether it was either to descend, or to be granted anew, to Kullee Moollah Khan, as the eldest son; or whether it was not to be shared amongst the children and widow of the deceased, like any other property of Mahomedan persons. It was proved, I think, to the satisfaction of the Judges, that Kullee Moollah Khan, if on no other grounds, was liable to the jurisdiction of the Supreme Court as an inhabitant of Madras; and a suit in equity was instituted against him and the East India Company, by his brothers, his mother and sisters. It has since been decided on appeal, and I have no doubt rightly decided, that there was no legal or equitable ground for making the Company defendants; but this is not the objection taken in the Minute, in which it seems to be thought that the whole system of Indian Government is threatened with destruction, if grants of the Government may be subjected to the interpretation of the Supreme Courts. I can only say, that any grant of property by a King of England, though the King cannot be made a defendant to the suit, may be brought into question, and may be subjected to the interpretation of the Courts of Law and Equity, and that the interpretation of the Courts of Law and Equity, and that the interpretation of grants of property by the Indian Governments, could not be reserved to the executive branches, or, in other words, to the grantors themselves, without an utter confusion of all English notions of justice, and some very strange results. The other case, at Madras, is one about the year 1818 or 1819, in which a crime having been committed at Hydrabad, by a person who, according to the words of the Charter of the Supreme Court, was amenable to it for the crime so committed, the Court thought that they might also arrest him for it in the place where it was committed. Upon this His Majesty's Attorney and Solicitor General in England were consulted, and it was asked whether the Court could issue compulsory process into the territories of a Prince "in alliance" with the Indian Government; to which the answer, as it might have been expected, was that the Court had no such power; and I have some reason to believe that the Court itself would have given the same

V. Legislative Councils; Courts of Justice; Code of Laws.

answer to the same question, inasmuch as "alliance" implies a certain degree of independence. But if an excuse is wanted for any mistake of the Court in supposing that Hydrabad was so far a component part of what is called the British Empire in India, or so far dependent upon and subject to the British Government, that as the cognizance of crimes committed there by His Majesty's subjects clearly belonging to them, so it might also send its process thither to arrest them, such excuse may perhaps be found in the facts of the cantonment at Hydrabad being permanently occupied by the forces of the Madras Government, and of the Government being administered very much according to the will of a British functionary, who always resides there. Long subsequent to the mistake of the Madras Court, and to the opinion of the Crown lawyers, two Advocates General of the East India Company, together with some other persons, fell also into a mistake, that Hydrabad was so connected with the British territories, that the English laws which regulate the lending of money were in force there against British subjects; and I am told that there are some who have felt great difficulty, notwithstanding the opinion of the twelve Judges of England, in bringing themselves even now to the belief that there has been in this respect any mistake at all. In a note, at p. 416 of the second volume of Mr. Henry Prinsep's History of the Administration of the Marquis of Hastings, there is a decree recorded, not judicial indeed, but executive, which from my knowledge of the moderation and love of justice of him by whom it was pronounced, and his dislike of encroachments of every sort, especially by the appointment of Receivers, I am confident would not have been made if Hydrabad had been in that situation of real independence which properly entitles one state to call its relations with another an "alliance." That excellent, able and eminent person knows, that I entertain for him the highest esteem and a sincere regard, but he will permit me to say, that in his Minutes of the 19th of February and of the 15th April 1829, I find no case referred to as an irregular proceeding of the Supreme Courts, respecting which it does not appear to me that there has been a misapprehension of some fact or principle of law which has affected the view which he has taken; and I cannot refrain from expressing a little surprise at the singular expressions which in two passages are employed to characterize the construction which has been given by the Courts to the word "inhabitants." I have already explained the grounds on which that construction is supported; it rests upon authorities so grave, that it might have been expected to escape the infliction of hard names; which, if I were inclined to resort, might perhaps be shown to apply more closely to the history of Indian politics, than to English rules of law.

13. I dare not follow the example which is set me in the Minute of defining the whole jurisdiction of the Supreme Court. Too many important and delicate points are involved and have been entangled in that matter for me to wish to decide upon them collectively. The view taken in the Minute was probably intended to be the same as that which was given by the late Mr. Charles Grant, in his note to the 34th page of his "Observations;" but there is this difference, Mr. Grant's Observations, though printed later, were written in 1792, and though he does not at all deny that the natives of the provinces were then subjects of the British Crown, he keeps his definition of jurisdiction clear of any admission to that effect. In the Minute of the 15th April 1829, they are described as subjects, and a few historical remarks will serve to show how much depends upon the fact of their being within the meaning of that term, and to how many difficulties the Supreme Court at Calcutta may be exposed in exercising a jurisdiction which in its origin was made to extend over all within this Presidency who should in any manner be subjects of the British Crown, but upon which jurisdiction there are no doubt sufficient indications that those who have framed subsequent statutes and charters for India have designed to put various restrictions. The design must be supposed to have been right; but it may be regretted that whatever was to be done in pursuance of it, should not have been made plainly intelligible, and free from all contradictions.

14. Factories established amongst the infidel people of the East have been deemed by the law of nations which has prevailed in Christendom, to be so far exclusive possessions, or at least privileged places, that all persons during there residence within them have been considered for most purposes to be clothed with the national character of the State to which the factory has belonged. In the East Indies, as early as 1618, Sir Thomas Roe, the Ambassador of James I., had secured, by treaty with the Mogul, the privilege for the Factory at Surat, that disputes between the English only should be decided by themselves; and the East India Company,

V. Legislative Councils; Courts of Justice; Code of Laws.

before the end of the 17th century, had obtained and made use of the permission to build fortifications at Madras and Calcutta: and they held the island of Bombay under a grant in perpetuity from the Crown of England, to which it had been ceded in full sovereignty by Portugal. In these circumstances, although it was a remarkable step, it is not perhaps very difficult to account for the establishment, by letters patent, of Mayors and Aldermen in the 13th year of the reign of Geo. I. at Madras, Bombay and Calcutta, who were to act as Justices of the Peace in those places, and in all the factories subordinate to them, and who were to be Courts of Record for the trial of all actions arising within those places, which should be brought against any person who should reside there at the time of action brought, or of the cause of action accruing. I will not venture to say whether in these letters patent, or in those which with some alterations were substituted for them in 1753, there was any intention on the part of the Crown to assert any territorial dominion. In the Charter of 1753, although there was no precedent for it in the Charter of 1726, there was introduced an express exception from the jurisdiction of the Mayor's Courts, of such actions as should be between the Indian natives only, which were directed to be determined among themselves. In 1765, however, the grant of the Dewanny made a complete revolution in Bengal. It put into the hands of the Company all the actual powers of Government; and it is well known to what differences of opinion this acquisition gave rise in England. Without resting the decision which was made in 1773 upon any critical arguments of law, or on any positive opinion of expediency, there are a few plain positions and glaring consequences, from which it seems to result, that a part of the determination which was come to was quite necessary; namely, that the right should be asserted of the British Crown and Parliament to regulate the powers of Government, which had been acquired by the Company in India. Before the Dewanny was obtained the Company had been established for more than a century and a half in India, under charters from the British Crown and Acts of Parliament, which, for the increase of the navigation and merchandize of the nation, had given them, for so long as it should conduce to that object, an exclusive right of trade in all places between the Cape of Good Hope and the Straits of Magellan, and had deprived the rest of the British people, for the same time, of the liberty of trading on three-fourths of the sea-coasts of the whole globe. It could not have been reconciled with justice or reason that opportunities so given should have terminated in 1765 in the establishment of the Company as officers of a foreign state, still less as independent sovereigns; and if any doubt had been tolerated as to the entire dependence of the Company upon the Parliament, it is difficult to say what might not have happened during the troubled times of England which followed the period of the acquisition of the Dewanny. The British people might possibly have found themselves excluded from trade with India, not for a time, but for ever, not by their own act and with their own consent, but against it, and by those who had, indeed, been their fellow-subjects, but were now become independent of them. Therefore, though I do not wish to be considered as assenting to all that was said or done about that time, the Resolution of the House of Commons on the 5th of April 1773, the Statute of the 13 Geo. III. and the Charter of Justice of 1774, appear to me to have been rightly founded, in every part of them, upon the principles, that whatever the Company had in India, they held as British subjects, that all their lawful powers of government were subordinate to the sovereign powers of the British Crown, and that in every respect they were liable to the legislative control of the British Parliament; and in whatever manner it may afterwards have been thought expedient to disguise the real state of things, it seems to me to have been a necessary and immediate result of the grant of the Dewanny, that all the sovereign rights of the Mogul Emperor in Bengal, Behar and Orissa, which would have remained in him if the grant had been to any of his own subjects, were transferred to the British Crown and Parliament; that the territory became British dominion, and the inhabitants subjects of His Majesty, but the mass of them subjects only as far as it was consistent with the laws of England that Hindus and Mahomedans could be subjects. The single and plain ground on which I would rest these propositions is, that when the Mogul put a Company of British subjects into the possession of territories and powers which might be made use of to defeat the very purpose and object of that political existence which had been given to them by their own King and Parliament, there accrued to that King and Parliament, as a necessary consequence, a right of assuming the whole sovereignty, without which the Company could not be controlled. The Mogul had no right to make them, the Company had no right to make themselves,

V. Legislative Councils; Courts of Justice; Code of Laws.

dependent upon him or independent of their own country; in either of which cases it might, and according to the ordinary course of human affairs must have come to pass in time, that they would have been called upon to wage war against the very land which had sent them forth to augment its own prosperity.

15. If all circumstances had admitted of this state of the case being manifested and declared in 1773, though such a course might have been subject to hazard, it would probably have saved an infinity of trouble in the end, and many of the perplexities which have been the offspring of a double and fictitious system of government. The grant of the Dewanny included not only the holding of Dewanny Courts, but virtually the Nizamut also, the right of superintending the whole administration of law in Bengal, Behar and Orissa, as it was vested in Shah Aulum in 1765. This is avowed in the letters of Lord Clive, and this is only a part of the claim of the Company themselves, in the case made for them upon the appeal of Mr. Buckingham against the press regulation. There were motives, however, which are very intelligibly explained in Lord Clive's letter of the 30th September 1765, which had made it convenient for a time that the Nuwaub should appear to retain the Nizamut, or superintendence of the administration of justice, and accordingly, when Shah Aulum gave the Dewanny to the Company, it had been agreed at their request that he should put the Nizamut into the hands of the Nuwaub, who at the same time entered into an agreement to take a fixed annual allowance from the Company to enable him to carry it on. He was in fact from thenceforth no other than a native officer of the Company; he held his courts only at their will and pleasure, and they exercised the power of regulating and altering them. Something had been done in this way between 1768 and 1772. In that year, Mr. Sullivan, the Deputy Chairman of the Company, brought into the English House of Commons a Bill for the due administration of justice in Bengal. I have never seen this bill at full length; but I collect from the accounts of it in cotemporary publications, that with the important difference that the appointment of Judges was to have been by the Company, its provisions for a new Court were in a great many respects similar to the Letters Patent of 1774, but that all Christian persons were to have been subject to the jurisdiction of the new Court, and to have been exempted from those of the Nuwaub. When this plan of the Company was thwarted, and the Supreme Court was established in 1774, the distinction of Christians was left out, and the only criterion of personal liability to the jurisdiction which is to be found in the statute of 13 Geo. III. c. 63, on which the Charter of 1774 is founded, is that of subjection to the British Crown. In s. 14, all who are "His Majesty's subjects" are made liable. It has been contended, indeed, that even in this statute it was intended to make a distinction between subjects born in the British islands, or their descendants, and the other natural born subjects of the Crown, and that it was the former only who were made liable to the jurisdiction of the Supreme Court. But this appears to me to be an erroneous notion, and one that has been the cause of some of the confusion which adheres to the whole system of the Indian statutes. The only difference of meaning which will be found in the use, at that time, of the two phrases, "subjects" and "British subjects," is, that the latter appears to have designated those who were permanently and to all intents and purposes British subjects, whilst the former included such foreigners as, in consequence of their residence in any British territory, possession or factory, were to be considered, according to well known rules of international law, to be clothed temporarily and for certain purposes with the character of subjects of His Majesty. The Charter of 1774 made even these liable to be sued or prosecuted; but it was to British subjects only, or absolute and permanent subjects, if I may so express myself, that certain rights and duties, such as that of sitting on juries, were restricted. No legal grounds will be found for affixing at that time any other meaning than this their obvious one to these terms; and unless we consider the term "subjects" in 13 Geo. III. c. 63, s. 14, and in the 13th clause of the Letters Patent to have had a more extended sense than that of persons of British birth or descent, and to have included foreigners, whether Indian or European, resident in Calcutta or any British Factory in Bengal, Behar or Orissa, there is nothing either in that statute or in the Charter itself which can be considered as giving the Court jurisdiction to entertain any actions against them, except in cases in which the Mayor's Court had before possessed such authority under the Letters Patent of 1753, and this would not have included the native inhabitants of Calcutta.

See Governor Johnstone's Speech in the Debate on the 30th March 1772.

Calcutta. The distinction which it has been attempted to establish between natives of the island of Great Britain and the Christian natives of the rest of His Majesty's dominions, is an unlucky gloss of a later period, and founded upon an expression, which I am inclined to suppose a careless one, in the statute of the 21 Geo. III. c. 70. Unfortunately the indistinctness of the views which were taken by the British Legislature of the nature and relations of the territorial acquisitions of the Company, and the show of a Native Government, which the Company were permitted for their supposed convenience to keep up, preventing all explanations of the use of the term "subjects," in the 13 Geo. III. c. 63, and indeed if those obstacles had not existed, a submission to Parliament of the question how far any other than Christians can be subjects, might have received all the agitation which had been produced by the bill for naturalizing Jews in 1753. Accordingly there is not either in the statute of the 13 Geo. III. c. 63, nor in the Charter of 1774, any declaration who are and who are not subjects, nor whether any of the territorial acquisitions amounted to an acquisition of the territory itself, or to anything more than powers to be exercised within territories of the Mogul, nor whether even Calcutta itself was so much within the allegiance that persons born there would be natural born subjects of the British Crown. These questions were left to be determined by the general principles of English law, whenever they might arise; but subject to such determination there was a jurisdiction given to the Court, first, over all persons whatsoever during their residence in any British territory, possession or factory, which there might be within Bengal, Behar or Orissa; secondly, over all natural born subjects, or others having indefeasibly the character of subjects of the British Crown, and over persons in their service within Bengal, Behar or Orissa, whether the place in which they might be were a British territory, possession or factory, or a place belonging to some Indian Prince, but under the protection of the Company. The intention was to have secured to the Crown a supremacy in the whole administration of justice; but the provisions made were inadequate to the attainment of the object, and have been defeated; and I do not mean to say that the policy of later years may not have been wiser than that of 1773, I only trace the course of these events.

16. Though it might not be convenient that the whole of Bengal, Behar and Orissa, should be taken to be British territories in 1774, those and all the other provinces which constitute the Presidency of Fort William, must be known to be so now; and if there are reasons of state which ought still to discourage the avowal or manifestation of that fact, those territories are (beyond all possibility of concealment) so much more than factories, and so visibly British possessions and dependencies, that subjects to any questions connected with religion, all the inhabitants of them during their residence must owe a temporary allegiance, and must be for the time "subjects," according to all the ordinary rules either of British or international law. I will not fatigue those to whom this paper is addressed by a string of statutes and other acts of state, in which the Indian Presidencies are designated as possessions of the kingdom of Great Britain and Ireland, or as British territories, nor will I do more than barely advert to the opinion of the Court of King's Bench in England on the question whether they were within the Navigation Laws; or to the declarations in the 53 Geo. III. c. 155, of the sovereignty of the British Crown over all the territorial acquisitions; nor to that proclamation of a former Governor General which we are told by a highly distinguished historian, was hailed with satisfaction by every Prince and Chief of India, when the supremacy of the British Government was asserted, and somebody, but I cannot undertake to say with precision who it was, reluctantly assumed the duties of "Lord Paramount of this Continent." To satisfy the Governor General in Council of the difficulties which a Court of Law must find in treating the Bengal Provinces as anything less than British territories or possessions, of such a description that Christian persons born in them are natural born subjects of the British Crown, and that foreigners residing within them are subjects during the time of their residence, it may be sufficient for me to bring to their notice some decisions of a venerable person whom I have been accustomed to consider of authority almost oracular in questions of the *droit public*, and of the law of nations. In the year 1800, Sir William Scott held that there was no sovereignty in the Mogul which interfered with the actual sovereignty of the British State, exercised through the East India Company; that the territories were British territories; and that the law of treason would apply in full force to Europeans living there. He seemed to consider that the Hindu and

See Memoir on Central India, and Political History of India.

V. Legislative Councils; Courts of Justice; Code of Laws.

Mahomedan inhabitants of those territories were in somewhat the same relation of subjection to the British Crown as Jews in England: but that an American merchant residing there, was as fully clothed with the British national character for the time of his residence, as if he were in England, and Sir William Scott founded this decision, in some degree, upon information obtained from Sir Robert Chambers, whom he had consulted, and who had recently returned to England after having been many years Chief Justice at Calcutta.—*The case of the Indian Chief*, 3 Rob. Adm. Rep. 28. In the House of Lords, August 12th, 1801, on the ground of Madras being a part of the British dominions, and that all foreigners resident there incurred the obligations of British subjects, it was decided in affirmance, I believe, of a judgment of Sir W. Scott's, that any permission given by the East India Company or the Indian Governments, without the sanction of the Crown, to American inhabitants of Madras, that they might trade with the port of a country at war with England was void, 3 Rob. Adm. Rep. App. B. 7. In 1806 Sir William Scott inclined to think that the possessions of the East India Company were within the terms of the Order of Council of 1665, declaring a particular right of the Lord High Admiral to extend to all places "within the *Kingdom of England*."—*The Maria Francoise*, 6 Rob. Adm. Rep. 288, &c.

17. Upon these grounds and authorities I could not come to any other conclusion than that, if the Act of the 13 Geo. III, c. 63, and the Charter of Justice of 1774, which are the foundations of this Court, were at this time to be interpreted by themselves, and not in reference to a scattered flight of subsequent enactments and ordinances, the Court, throughout the provinces which constitute this Presidency would have a jurisdiction, however inconvenient, over all persons who, according to the ordinary rules of English law, should be subjects of the Crown, whether absolutely or temporarily. But it is scarcely necessary for me to say that I do not consider the Court to possess that jurisdiction in such a way as to be used for any practical purposes at the present time. I am desirous only to point out the course and manner in which the constitution of the Court has been affected; to establish the fact that it is only by the Court that encroachments have been made, and to make the Governor General in Council aware of the situation in which it is now placed.

18. The first obstacle which the Court encountered upon its establishment in this country, was the upholding of the Nizamut under the Nuwab and his native officers in a state of complete independence of it. It is not to be doubted that if Mr. Sullivan's bill had passed, it was the intention of the Company to have brought the whole of the Native Courts into subordination to it, and long before this time it would have been done. When the present Supreme Court was substituted the jurisdiction similar to that of the King's Bench which was given to it, and indeed its very title and the objects of the whole charter show that it was supposed there would have been inferior Courts subjected to its superintendence. A system correspondent to such intentions could not have been established without the cordial co-operation of the Governor General and Council of the time, and probably it ought not to have been attempted but by very slow and cautious steps, and supplementary enactments must have been made for securing the Hindus and Mahomedans against an abrupt demolition of their customs and usages. But instead of any preparations of such a tendency, all things were maintained in a posture rather of opposition than merely of separation. It is well known what disgraceful scenes of discord and confusion ensued, and I have no inclination to defend the spirit and manner of the proceedings of the Judges of the Supreme Court, nor even to assert that the supremacy of the Court had been sufficiently provided for by any practicable scheme. But this I must say in justification of the Judges, that there was not that co-operation which they had expected from the Government; that the re-establishment in 1774 of the Nizamut at Moorshedabad in its old form, was not a symptom of any inclination to promote that subordination of the Provincial Courts which, I believe, was looked for and would have been gradually accomplished, if the Supreme Court had been a Court of the Company; and that if the Judges caused mischief by an exercise of their powers in the provinces, a state of circumstances was presented to them, in which they had but the alternative of abandoning that part of their commission. In the Minute of the 15th of April, it seems to be taken for granted that the Judges overstepped their jurisdiction, and that the 21 Geo. III, c. 70, was passed for that reason, but the Act was passed, not because the jurisdiction had been exceeded, but because it

had been found difficult to exercise it without conflict with the Provincial Courts and the Government. The 28th section provides indeed an indemnity for the Governor General in Council and the Advocate General, for their transgressions of the law in opposition to the Judges, but no such indemnity will be found to have been granted or required for the Judges themselves.

19. The most important part of the Act of the 21 Geo. III. c. 70, is the acknowledgment by the Parliament of Provincial Courts existing independently of the Supreme Court, and the declaration of the expediency and justice of preserving to the Hindus and Mahomedans their peculiar laws and usages. Many circumstances contributed at the time to incline the Parliament to this course, and to these it may be useful to advert, as casting light upon the meaning of the Act. The nation was struggling with the American war, the experiment of the Supreme Court had not answered expectations, and had occasioned inconvenience; it was plain, that the attempt to introduce an English superintendence of the law on the part of the Crown had been made without any sufficient scheme or due preparation; a plan which might have been carried forward, if it had been promoted by the Company as their own, had failed when imposed against their will. The Ministers, to use a homely phrase, when they thought they had secured the administration of justice to the Crown, had reckoned without their host. In some instances the collection of the Revenue in India, on which every thing depended, had been impeded by the dissentions which had taken place. Perhaps also it was thought desirable, in the impending treaties with the maritime states of Europe, that India should bear as little as possible the character of a possession of the Crown. Some things in the Act are stated plainly enough. The Court is not to have jurisdiction in any matter concerning the Revenue, and, except in certain specified cases, no person is to be subject to the jurisdiction of the Court by reason of his being a land-holder, nor of his being employed by a British subject. The existence of the Provincial Courts is not only recognised, but the Governor General in Council is confirmed as a Court of Appeal, with a power of making regulations for them. But in this Act, as in the former one, there is no plain statement of the relation in which the Indian territories stood to the British Crown, nor whether any Indian natives were to be comprehended under the term "subjects," nor whether the Provincial Courts were to have a concurrent jurisdiction with the Supreme Court, or an exclusive one; nor, if the latter, what were to be the limits of it. The phrase "British subjects" is indeed used in this Act, and that of 21 Geo. III. c. 63, in such a way as necessarily to exclude from it the Hindu and Mahomedan inhabitants; but it is so used, that, with respect at least to subjects not being natives of Great Britain, or India, subsequent glosses have made it almost impossible to affix any definite understanding to it. In the 21 Geo. III. c. 65, s. 28, British subjects in the service of the Company, or licensed by them, are forbidden to reside, except under special license, at any other place than some principal settlement, or within 10 miles of it: and by the 21 Geo. III. c. 70, ss. 13, 14. the obligation is imposed on British subjects of registering the names of their native stewards, partners, or agents. This is sufficient to show that the term was not intended to apply to the Hindus and Mahomedans; but when we endeavour to ascertain those to whom it was intended to apply, we find considerable difficulties. In section 24, it is used only in opposition to "natives," and might be considered as comprehending at least all the subjects of Great Britain born out of India, and this would be consistent with the use of the same words in section 3; but this interpretation is, in some degree, made doubtful by the use of the phrase "British European subjects," in section 16, which looks as if there might be "British Indian subjects," or else that British American, and West Indian subjects were not included in it; and then in section 10, it is so expressed, that it has been recently supposed that it was meant to limit the meaning of the term "British subjects" to natives, or the descendants in the paternal line of natives of the island of Great Britain. This clause has made, and, unless it be explained by the Parliament, seems to be likely to make sad confusion. It is utterly out of the question to give it effect, according to the very letter. Unless there was some contemporaneous act of the Irish Parliament, it would exclude natives of Ireland, and my own opinion is, that it either was carelessly used, and that in the interpretation of it by courts of law, a more extended sense must be given to the words "Great Britain," so as to include the territories of Great Britain as fully as they are included in the 129th section of the 33 Geo. III. c. 52; or if it be possible to suppose that an intentional use of the term in its literal sense may be

V. Legislative Councils; Courts of Justice; Code of Laws.

accounted for at that time by the fact of a large portion of the subjects of the Crown being then in a state of open revolt and civil war, the influence of an expression thus used upon a transient occasion, ought not to be preserved and carried down for the purpose of warping so important a matter as the meaning of the phrase "British subjects" in subsequent statutes. To my great surprise, however, I have been told, that two learned persons, whom I hold in the highest respect, and who have had unusual opportunities of becoming acquainted with India and its established relations with the United Kingdom, have recommended, upon the ground if its being in accordance with the general understanding of the term in India, that if a declaratory act should explain the meaning of "British subjects," it should be limited to those who have been born in Great Britain, or perhaps in Ireland, or who can prove a pedigree in the paternal line from a native of one or other of those islands. This would exclude from the class of British subjects, and in a great measure from the rights and obligations of British law in India, the natives of Guernsey and Jersey, of Jamaica, Barbadoes or Canada, or the Cape of Good Hope, of whom there may always be many in his Majesty's army, in the profession of the law, or engaged in merchandize; and it would put them in the same relation to the law, in most respects, as the Hindu and Mahomedan races. This would be an innovation, I apprehend, of a very serious nature in the system of laws by which the colonies and dependencies of England are bound to the mother country and the throne. Nor is it only the natural born subjects whom it would affect, but all who may become subjects by cession or conquest. This is a case now pending in the Supreme Court, in which the fortune of a young person, who has returned to India after being educated in England, is in the hands of the Court, and is of very considerable amount. The Court can scarcely stir a step in the matter without deciding whether the father of the infant is liable to its jurisdiction, and unless he is so, it will be impossible to make a satisfactory decree. This father is a Christian inhabitant of Chinsurah, of Dutch descent, and is believed to have been born there before its cession to the British, and whilst it was a Dutch Settlement. Is this man now one of those persons "who have heretofore been distinguished by the appellation of British subjects?" If not, has the Provincial Court which was established for the preservation of Hindu and Mahomedan laws and usages, an exclusive jurisdiction over him? Is the infant to seek there a decree which she cannot obtain in the Supreme Court; and what is the Supreme Court to do with the fortune of which it has taken charge, and respecting which it cannot make any sufficient decree without having the father before it? Other questions of a very serious nature are connected with these. Would the Governments of France or America think that one of their subjects, of whom there are many in the provinces, had been treated according to the "Comity of Nations," if he were to be convicted of an offence in a Provincial Court, which would be incompetent to try an Englishman, who would be entitled under a similar charge to be tried by a Jury and by European laws?

20. Subsequently to the 21 Geo. III. c. 70, further doubt has been thrown upon the meaning of the terms "subjects" and "British subjects" by the various applications which have been made of them in statutes and charters relating to India. I cannot undertake to enumerate at present all these instances, and a few will be sufficient for my purpose. Where the word "subjects" has been used alone, as in the 26 Geo. III. c. 57, s. 29, it would seem to have been meant to be taken in its fullest sense. Suppose a Bengal Lascar, belonging to one of the Company's ships, murders one of the crew on shore, in the island of Johanna or Sumatra, would it not be within the remedy intended to be provided by that Act, that he should be amenable to the Court of Oyer and Terminer at Calcutta, upon the ship's arrival in that port? Yet, if this be so, it makes it extremely difficult to say that the same Court has not under that Act, if in no other way, a concurrent jurisdiction with the Provincial Courts over the Hindu and Mahomedan natives of the provinces under British Government. There is still more difficulty, however, as to the application of the phrase "*British subjects.*" In the 24 Geo. III. c. 25, s. 37, these words include all for whom relief is provided as creditors of the Nabob of Arcot. In the 24 Geo. III. c. 25, ss. 45. 50. 64, and the 26 Geo. III. c. 57, ss. 1. 30, and the 35 Geo. III. c. 52, s. 62, they are used to describe all against whom penalties are given for corruption or extortion. In the 33 Geo. III. c. 52, s. 98, which is connected with 53 Geo. III. c. 155, s. 108, British subjects are prohibited from residing at more than 10 miles distance from one of the principal settlements, and these clauses

clauses have so plainly a connection with the 33 Geo. III. c. 52, s. 129, that it would be impossible to affix any less extended meaning to the words as they are used in them, than that which is given in s. 129, namely, subjects of His Majesty, of or belonging to Great Britain or the islands of Jersey, Guernsey, Alderney, Sark, or Man, or Faro Isles, or to any of His Majesty's colonies, islands or plantations in America or the West Indies; and I take it to be certain, though I have not the Irish statutes at hand, that the Acts which were passed by the Irish Parliament about the same time as the 33 Geo. III. c. 52, placed natives of Ireland exactly in the same predicament as those of *Great Britain* and its dependencies; and if this be so, there would be no good ground on which the natives of any African colony or of New South Wales, the Mauritius or Ceylon, could now be distinguished from the rest. In the 39 & 40 Geo. III. c. 79, s. 2, and in the 53 Geo. III. c. 155, ss. 105, 106, 107, the term "British subjects" seems also to be used in opposition only to natives of India, to include all subjects not born in India, and to exclude all who are born there, which, however, must necessarily be subject to an exception which is to be understood, though it be not expressed, of those who are British subjects in right of a British father or paternal grandfather; but in the 40th section of the last-mentioned Act, the words "without the limits of the Company's Charter," leave it again doubtful whether, in that statute, natives of the Cape of Good Hope, New South Wales, or Ceylon or the Mauritius, are or are not meant to be included by the term "British subjects." The expediency of affixing some precise meaning to these terms has been much more urgent than it was at an earlier period, since the Charters of the Madras and Bombay Courts have expressly limited the jurisdiction of those Courts in certain cases to such persons as have been heretofore described and distinguished by the appellation of "British subjects." It would seem that it is only the representatives of such persons who can demand to have the assistance of the Ecclesiastical Court at either place, and that even the representatives of a Christian inhabitant of Madras, if he was not within that appellation of "British subjects" during his life, could not insist upon having either probate or administration, though I know that it has been the constant practice to grant both upon request, even to the representatives of the Hindu or Mahomedan inhabitants. I have adduced only a small portion of the instances in which this important expression of "British subjects" is vaguely applied in the statutes, and it is not only by the statutes that it may be shown how little thereis of any general understanding of the meaning of it. The Charter of Charles II. in 1669, purports to make all the inhabitants of Bombay, and their descendants, British subjects, and seems to have intended to confer the same right on the inhabitants of other places which might subsequently be acquired by the East India Company. The convention with France, dated at Versailles, August 31st, 1787, stipulated that Frenchmen should have the same advantages in India in the administration of justice as His Majesty's subjects. I forbear to make any inquiry as to later treaties. In a work which I have heard attributed to Sir John Macpherson, a former Governor General of India, and which was published in 1793 for the information of Parliament at that period, it is repeatedly stated that Armenians and Frenchmen in India are British subjects. Sir Christopher Robinson, in his Admiralty Reports, is led to suppose, by the use made of the terms by Sir William Jones, that they include all the inhabitants of the provinces; and in a case, in the third volume of the Reports of the Court of Nizamut Adawlut, recently published, I find one of the Judges, and the very accurate and able reporter, using the term as synonymous with the expression of "native subjects of the British Government," which occurs in Regulation V. of 1809. Perhaps, if I were asked what I myself should say approached to a criterion of any question, whether a person is within the meaning of this expression as it is used in the statutes and the later charters, it would be, "whether he is a subject by any other title than that of birth within British India," and that, if he is a subject in any other way, he is a British subject according to the meaning of the Madras and Bombay Charters; but that, if he has no other claim than that of birth in British India, he is not. But this rule includes more persons as British subjects than the Company's advocates admit to be of that description; and it excludes some whom I regret to see excluded. I have a strong opinion of the impolicy of establishing a name and test, which is to make of the illegitimate children of Englishmen, and their Christian persons, a separate and inferior class; and the Act of the 21 Geo. III, c. 70, out of which all these perplexing distinctions have sprung, had but for its avowed object the securing to the Hindu and Mahomedan inhabitants their ancient laws and privileges, and was not apparently intended to

V. Legislative Councils; Courts of Justice; Code of Laws.

affect any rights of the Christian population, for whom it made no provisions, and who, consequently, if they are not under the jurisdiction of the Supreme Courts, can scarcely be said at present to live under any positive law at all. This uncertainty extends its mischievous influence in many ways. If Christians born in the provinces are not to be included in the term "subjects," it would seem to follow that the provinces, even now, are not regarded by the Parliament as properly and strictly British territories; and if not, the questions, which of late have been made as to the powers which the Supreme Court has hitherto exercised, as necessarily incidental to the most limited construction of its jurisdiction, would come to be of real difficulty. The Minute of the 15th April complains of the appointment of receivers of rents in the provinces, and even of writs of *fieri facias* against the goods of British persons being executed there; and at Bombay it seems to be maintained, that the Court, without leave of the Governor in Council, cannot compel the attendance of a native inhabitant of the provinces as a witness, even on an indictment. I have always supposed, and still maintain, that these powers and others are necessarily incidental to the determination, by the Supreme Courts, of any causes at all; but if the provinces are territories of so anomalous a character, that Christian persons born there have not the name of subjects in the British statutes, I should not feel quite sure what arguments might be sustained upon the other questions. The illustration of the doubts in which the jurisdiction of all the Courts in India is now involved might be extended much further. I understand it to have been decided, that the Court at Bombay has no right to issue a *habeas corpus ad subjiciendum*, nor other mandatory writs, to native inhabitants not liable to what is termed its ordinary jurisdiction. Now, taking the ordinary jurisdiction of the Court to be over British subjects, and those in their service throughout the whole Presidency, and over all persons whilst they are inhabitants of the island of Bombay, what persons are they over whom it retains any extraordinary jurisdiction after this decision, and what is the nature of that extraordinary jurisdiction? Who are those liable to it? Who are meant to be included in the Admiralty jurisdiction of the Court by the 53 Geo. III, c. 155, s. 110, and to be excluded from it by the Bombay Charter, in the clause which may be found in the printed copies at p. 43? The direct contradiction between the statute, and this part of a Charter granted 11 years after the passing of the Act, is only another instance similar to that which I noticed in the first paragraph of this paper, relating to the Revenue; and I could adduce others. Both of the statutes which authorized the Charters of the Madras and Bombay Courts, expressly provided that they should have the same powers as the Court at Fort William, but the Charters themselves purport to give powers much more limited. In this case, are the statutes, or the Charters made under them, to prevail; and how far do the Charters of the new Courts affect that of the older one? Are the limitations on the powers of the new Courts void, as giving powers different from those of the Calcutta Court; or are the powers of the Calcutta Court altered by the Charters of the new Courts? An instance of the importance of these questions is presented by the opposition recently made at Bombay by the Government, to the writ issued into the provinces for the purpose of compelling the production of a native witness. There is a clause in the Madras and Bombay Charters, which purports to prohibit the Courts from compelling the attendance of native witnesses, at least in civil cases, in any other way than they would be compelled to attend a Native Court. This is resolving the necessity of attendance into the will of the Governor in Council, who can regulate as he pleases the practices of the Native Courts. Then is this clause restrictive to that extent of the process of the Court at Fort William, as well as at Bombay, or is it restrictive of neither? The question is not whether the Courts, in a matter of pure discretion, will attend to such an indication of what has been thought right by those who advised His Majesty in the wording of the Letters Patent; but whether the Courts have or have not a right to refuse a *subpœna*, or a *habeas corpus ad testificandum* to a suitor, a dependant, a prosecutor, or a culprit; and whether, upon a mandamus issued under the statute of 24 Geo. III. c. 25, by the Court of King's Bench in England, directing the Judges in India to take evidence in a suit pending in England, they would be authorized to state, in their return to the mandamus, that they had declined to procure the attendance of some important witness, because it would not have been consistent with the rules of practice established by the Governments for the Provincial Courts.

See also 26 Geo. 3, 57. 28; & 1 Geo. 4, 109.

21. Enough perhaps has been said to make it understood, that it has not been my purpose, in this paper, to extol the present constitution of the Supreme Court,

nor

nor to maintain that its jurisdiction is conveniently settled. But I could not dismiss the Papers which have been laid before the Judges, without showing, that so far from encroachments having been made by this Court, the Court which was intended at first to have been in reality a Supreme Court, has in fact no Court below it except the Court of Requests, not even a single Court of Quarter Sessions having been called into operation; that whatever alterations have been made of the powers of the Court, have had the effect, not of enlarging, but of restricting them; that this has not been done in a direct and manifest way; but the original Charter has remained unrevoked, and its provisions, intended for a very different state of things than the present, are now to be construed in conjunction with a variety of subsequent laws, through which it has from time to time been indirectly and uncertainly influenced; sometimes by the setting up of counter institutions, susceptible of perpetual modification by the Government alone, and without its having been made clear whether they were to have concurrent or exclusive jurisdictions; sometimes by declarations of a part of the jurisdiction of the Supreme Court, in such a way as to leave it to be doubtfully inferred that the *expressio unius* was meant to be the *exclusio alterius*; sometimes by ordinances, which, to persons unacquainted with India, may have borne the appearance of being simple and of little consequence, but in which the most important consequences have been involved; sometimes by flat contradictions, which the Judges are to reconcile as well as they can. In addition to all this, by the obscurity in which the dominion of the Indian territories has been left, and by the uncertain use of the terms "subjects" and "British subjects," the very alphabet, or at least the elementary terms in which the limits of the jurisdiction must be expressed, have been made as it were a foreign tongue. I blame no one for this, but I confess that it rather exceeds my patience to find the Court blamed for the inconvenience which has been the consequence of it. I am deeply sensible of the extreme difficulty of legislating by Act of Parliament or Letters Patent upon the internal affairs of India; I readily admit that the first establishment of the Supreme Court at Calcutta was hastily and improvidently made, and that it stood in need of corrective or supplementary enactments; but I cannot acquiesce in imputations of encroachment against the Judges, because the laws, which they are sworn to declare, have been imperfectly adapted to the circumstances in which they are to operate; such as they are, I have been contented to make the best of them, "Quæ usu obtinuere si non bona, apta saltem inter se sunt," and by something like a spontaneous adaptation of imperfections to each other, the anomalies of Anglo-Indian law, of which but a small part is comprised in the foregoing statement, have had less of evil effect than might be imagined. I have now assisted for eight years in two of the Supreme Courts, without witnessing in them any difference with the Indian Governments, and without having found it necessary to ask for assistance or remedial interference from any of the authorities at home, nor should I have thought now of detailing the embarrassments which are incidental to the discharge of the duties of my office, if it had been possible to dismiss without observation the remarks upon the Courts which the Governor General in Council, with a fairness which I feel to be a substantial obligation, has permitted the Judges to read. Having gone into the subject, I will add, that the defective arrangements under which it has hitherto been possible to act, it may be more difficult to manage hereafter. The opening of the trade to India has necessarily produced, by degrees, a greater intercourse between the inhabitants of India and those of the rest of the world, that intercourse could not continue long without other persons than the natives finding their way into the provinces, and abiding there; the Provincial Courts in the course of half a century have been gradually acquiring strength and consistency; there was obtained for them, some time ago, a concurrent jurisdiction with the Supreme Courts in some cases, and claims are now made by members of the Governments that their old jurisdiction is exclusive of all other, even to the extent of prohibiting the process of the Supreme Courts from running into the territories within which the Provincial Courts act. At Bombay, the Governor in Council and the Court have recently been in open conflict, and even here, where a perfect good will has subsisted, powers, without which it would be impossible for the Supreme Court to decide any suits at all, or to comply with peremptory enactments of the Parliament, are called in question and impugned. Of the inconveniences which exist and which in these circumstances must increase, I am so far from thinking that the papers sent to us by the Governor General in Council have in any way presented an exaggerated statement, that I am satisfied they do not

V. Legislative Councils; Courts of Justice; Code of Laws.

advert to the most important of them. It may be sufficient to say, that in the Ship Registry and the Mutiny Acts there are several which have not been mentioned.

22. It is not without much hesitation that I proceed to suggest remedies for these evils. I have no means of learning here the views of those to whom it belongs to give any new forms to the Government of India, and what these may be will probably be determined by circumstances of political expediency, which are beyond the horizon of the point at which I stand; there are some whom it is likely I may offend by the plainness with which I must state my opinions if I state them at all. But I apprehend it to have been the wish of the Governor General in Council, that any view which might be given of existing defects should be accompanied by a corresponding view of arrangements adopted for their removal. There is one method proposed in the Minute of the 15th of April which is at least simple, and which would effectually avoid the necessity of any further arrangements; namely, that all the proceedings of the Courts should be according to the will of the Government. The surprise with which I first read this made me read it more than once, and if it is possible to construe it as meaning only, that the process of the Courts, and with some exceptions the laws which they have to administer, should be liable to be altered from time to time, when they should have been found inconvenient, by a well constituted Legislative Council in India, which should itself be really subordinate and accountable to the Crown and Parliament, my assent to it has been already expressed; but if, as the language of the Minute seems to import, it is intended that the judgments and orders of the Supreme Courts, though made according to law, should have effect only by the permission of some other branch of the Government to be given afterwards, or even that the Governor General in Council, as at present constituted, should have the right of altering and limiting the powers or process of the Courts, I beg that my dissent from that plan, and an humble protest against it, may be considered as expressed by me in the most unequivocal and strongest terms. I know that the Governor General in Council may even now make what orders he pleases in his official capacity, and that there is no tribunal in India to which he is answerable, and that this immunity is in a great measure extended to those who act under such orders. I am well aware also, that the Courts of Justice have no means of enforcing the laws which they declare, unless the Government be pleased to assist them; but at present a grave responsibility, in theory at least, is annexed to any refusal to assist in carrying the law into execution, and a more serious one to any positive opposition to it, and neither the one nor the other, I apprehend, would be deemed justifiable in the British Parliament, except upon the ground of urgent circumstances. But the object of the Minute of the 15th of April, if I understand it, is that an interference of the Government with the proceedings of the Courts should be an ordinary operation, and should extend to the annulling of judgments already made, subject only to the general responsibility which is attached to all other acts of Government. Of this I never can express an approbation, until I am told by the sole competent authority, that it has been thought right to make the sovereignty of the King in Parliament only nominal in India, and that there shall be no law there which is not liable to be altered by the executive branch, and not only with prospective but retrospective effect. The Governor General in Council is, both in the theory and practice, almost entirely the organ of the Company. The Commander-in-Chief, who according to usage is one of the Council, is also indeed an officer of the Crown; and the Governor General is only for a time connected with the Company, and in rare instances a person may be found in that situation who has been in India before, and who has talents, information and firmness, which enable him to act in a great measure by himself, but in the long run it is the Company which gives the whole tone and character to the acts of the Government. The President and Board of Commissioners have by statute the amplest rights of control and interference, but after all it is in the Company and its servants only that there is an intimate and familiar knowledge of Indian affairs, and an uninterrupted and continual bias of them, they present a medium through which it cannot always be possible to see distinctly. In short the Board of Commissioners and the Parliament have even now not so much of the reality as of the right and name of the sovereign powers, and if it were provided that the only Courts to which the Company's servants are now amenable in India were to be subjected to the orders of the Governor General in Council, I say that the Company and their servants would at once be sovereigns in India in all but the name

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V. Legislative Councils; Courts of Justice; Code of Laws.

and the right, and sovereigns uncontrolled by law. It is with reluctance, but surely not without being called upon to do so, that I touch upon matters such as these. It certainly is not from any ill will nor prejudice against the Company, nor those connected with it, to whom I am not insensible that both India and England owe incalculable advantages, and to whom inasmuch as I believe upon a deliberate conviction that the existence of a political body corporate is necessary for the Government of India by England, I hope to see all their lawful powers of Government, vast as they are, continued and confirmed. The inaccurate and confused enactments and ordinances which have been noticed in the preceding part of this statement might be set right with comparative ease, if they were merely verbal and not connected with faulty arrangements and misunderstandings which lie deeper in the Indian system. There is an utter want of connection between the Supreme Court and the Provincial Courts, and the two sorts of legal process which are employed by them. Lamentable as it is that such a feeling should exist, the exercise of the powers of the one system is viewed with jealousy by those who are connected with the other; every Court in India is liable to be perplexed by the obligation which more or less is imposed upon all, of administering three or four different sorts of law to as many classes of persons. That which is before all other things desirable, and without which the root of these mischiefs never will be reached, is the obtaining a clear and steady view, and the establishing a general understanding of the just rights in relation to India and to each other, of the Parliament, the Crown, the Company, the British people, and the Indian people. It may savour of presumption to lay down the law in matters of such high importance; but on the one hand I am satisfied that no two persons can talk about India without misapprehending each other if they are not previously agreed as to these points, and on the other, I do not believe that there is so much of a positive and fixed difference of opinions respecting them as there is of an indistinctness and fluctuation which a plain statement may remove sufficiently for my present purpose. The Parliament, I conceive, has the whole right of legislation, excepting so much as it may have delegated, and even in that case it retains the right of revoking, modifying, revising, controlling and superintending. The Crown has the sovereignty, with which many dormant rights are connected, and the power of controlling and directing the executive government, and of making orders for every thing which is not otherwise provided for by the Parliament, or by the laws of the United Kingdom. At present the Crown appoints also the Judges of the only Courts to which British persons are generally amenable. The Company, to whose rights of property my present observations have no reference, are in possession throughout India of the whole executive powers of Government in subordination to the Crown, and upon a somewhat different footing from the rest of the particular powers in Bengal, Behar and Orissa, of collecting and managing the whole revenue, of administering justice amongst the Indian people, and of maintaining an army, and they have strong claims both of justice and expediency to the continuance of these powers in their hands, and those of their numerous officers and servants as long as it can be made to consist with the real interests of the British and Indian people, and with the rights of the Crown and Parliament. The British people are entitled to all the benefit which, by the efforts of the Parliament, the Crown and the Company can be made to result to them from a mercantile and general intercourse with India; it was for this object that the Company was created, it was only upon the ground of their exclusive privileges tending ultimately to this object, or in some other way to the common good of the nation, that the grant of them could at first have been maintained to be lawful. The Indian people have not any real interest which is at variance with those I have mentioned; no other calamity could happen to them half so frightful as that the British Government should terminate; and good regulations would make a steady and gradual increase to an indefinite extent of the intercourse between India and England a blessing to both. If, indeed, we were to take up the detestable doctrine, that India is valuable to England solely as it is capable of yielding a surplus revenue to be appropriated by the latter, it would be plain enough that the interests of the two people are at variance; but if the object of the intercourse of the two nations be not to take money out of the pockets of one and put it into the pockets of another, but to interchange all good, whether physical or moral, which may be in the possession of either, and to obtain a wider area and more varied opportunities for the exercise, in right actions and to good purposes, of the faculties and energies of both, then there is but one interest, howsoever

V. Legislative Councils; Courts of Justice; Code of Laws.

ever it may be obscured and hidden, and the paths to it may be crossed and perplexed by our imperfect intellects and free-will. Of these rights and powers, the particular points to which my observations are directed are those of legislation and the administration of justice. The legislative power belongs of right to the King in Parliament, but in fact is principally exercised by the Company; for the Regulations of the Governor General in Council are at present the effectual legislation of India, and the Parliament, from an unavoidable ignorance of the internal affairs of India, has had very little to do with these laws either before or after they were made. The whole administration of justice was once on the point of falling into the hands of the Company, when an awkward attempt was made to take it for the Crown, which has ended in its being broken in two, and its being left in its present disjointed and inefficient form. To rectify this state of things, the first object seems to be, that each of these departments of government should be placed more distinctly under one head; that something should be conceded to the Company on the one hand, but that on the other the power of legislation should be secured much more firmly and substantially to the Crown and Parliament than it is at present. If the Company should cease to be in India a commercial body, and become entirely a political organ of Government, I should see no objection against leaving to it all the ordinary administration of justice; but adequate securities must in that case be provided against any invasion of the right of making laws, by the exercise in other hands of a right of interpreting them. I could approve of a change by which every Court in India of primary and original jurisdiction might become what is called a Company's Court, if by means of a well constituted Court of Appeal it could be made tolerably certain that the laws should be administered in the spirit in which they were made, and if by the help of a subordinate Legislative Council in India a real and effective revision of all Indian laws and regulations by the King in Parliament could be kept in operation. In other words, to put the ordinary administration of justice in India upon a good and durable footing, it seems to me that all the officers by whom it is to be conducted ought to be appointed immediately by the Crown, or all by the Company, and that the latter is more practicable than the former; but that to secure the right of making laws from being defeated by the mode of putting them in action, there ought to be a Court of general appeal in India, of which it should be the main object to keep the two powers of making and of dispensing law in accordance and union with each other, and that to enable the Parliament to be really the Legislature of India, there should be in India a Legislative Council, subordinate and responsible to the Parliament. Of these two great links of the political relations of India with the United Kingdom, the mode of establishing one has been under consideration in the earlier part of this Paper. Of the Court of Appeal, I should say that all the Judges ought to be appointed by the Crown, but that a considerable portion of them, perhaps the majority, should be taken from amongst the Company's servants, and that the jurisdiction should be chiefly upon appeal from the Superior Provincial Courts, one of which should be established in Calcutta. Whether there should be an entirely distinct system of Revenue Courts, whether the Court of Appeal should have a general superintendence of the proceedings of the Provincial Courts by some shorter process than formal appeals, and whether it ought not to have an original penal jurisdiction over offences of a high nature, are matters which would require a more minute consideration than I can at present give to them. All the Provincial Courts and Courts of Circuit should have the power of administering law to British as well as to Indian persons, together with a general superintendence over the Zillah and inferior Courts within given districts. For the present it would not perhaps be necessary that the jurisdiction of the Zillah Courts should be altered, but upon this point I am not entitled, by a sufficient knowledge of the provinces, to speak with any confidence. If regular and permanent circuits could not be at once established throughout all India, the existing circuits might be sufficient for a while, or in addition particular circuits might be appointed by the Provincial Courts, from time to time, with sufficient public notice; and the trials of actions commenced in the Provincial Courts might be so appointed in particular parts of the circuits as to prevent as much as possible the expense and trouble of bringing witnesses from a distance. If British persons were to be generally amenable to the Company's Courts, those Courts must be made capable of administering justice according to the principles, at least, if not the exact rules of British law; and for this purpose the Company would have to take into their service, or to educate a sufficient number of English lawyers, to afford the

assistance of a Judge of at least one to each of the superior Provincial Courts. At first it would be necessary, as at present, that actions against Mahomedans, Hindus or British persons, should be determined by Mahomedan, Hindu or British law, according as the defendant might be of one or other of these classes; but this is really so strange a practice that it must be put an end to soon, and in less than another period of twenty years, a well constituted Legislative Council might make one code of municipal law, applying, with a few peculiar exceptions, to all persons in India. The laws of marriage and of succession to property, including the law of adoption, would perhaps be almost the only permanent and insuperable peculiarities; and by requiring that in adoption, the intention of the adopting party should be expressed in writing, this act might be put pretty much on the footing of other obligations and engagements.

23. The Governor General in Council has been so good as to give the Judges the opportunity also of expressing their sentiments respecting the free admission of all the subjects of the British Crown into India, with the liberty of purchasing and holding lands. This is a subject on which I feel that my opinions are not entitled to much consideration, and I have never applied myself to it in such a way as to be able to go into the details. I have always apprehended it to be an inevitable consequence of a free trade, that the British merchants and agents must not only pass to and fro in the interior of the country, but that they must become connected with the cultivation of the soil. This has, in fact, taken place to a considerable extent, and it seems to be now only a question of degree, not whether British persons shall hold lands at all, but to what extent, in what way, and under what regulations they shall hold them. Decided opinions are expressed by his Lordship the Governor General in Council, and are known to be also entertained by the Secretary in the territorial department, whose great abilities, experience and caution, and especially his intimate knowledge of the revenue system, give to his conclusions peculiar weight and value. These have considerably diminished the apprehensions which I had been taught to feel of the consequences of any great and sudden innovation in this respect; and there was no need of them to satisfy me that "colonization," which, in reference to India, and in the ordinary acceptation of the term, has always seemed to me to be sheer nonsense or something worse, is not what is thought of by the Government. But there is no view which I am able to take of the subject in which it does not appear to be a matter of difficulty, and one which would require many and resolute arrangements to throw all doors open, and to let those come who might choose to come, and those buy who were able to buy, could scarcely fail to produce confusion, there would be a danger at least of many persons coming here without adequate means of providing for themselves, under the mistaken notion, that their own labour or skill would suffice. Destitution in India, is to an European a state of extreme wretchedness, and a wearisome but certain road to premature death. The natives in many parts of India, though not so much in Bengal as elsewhere, would be greatly annoyed by European settlers, especially where the village system prevails. English landowners might be expected to give a great deal of trouble to the revenue department. The rigid system of the land revenue would probably be too strong for them; but what opposition might they not excite against any increase or alteration of the Sayer duties, or the imposition of other taxes, which in the course of time will, in all likelihood, become necessary. An enthusiastic proprietor of a zemindary might make it a focus of missionary zeal, which would disturb a province. New Courts of Justice, and with increased powers, would be wanted. I should think that, if the experiment were to be tried, it had better be confined at first to this Presidency, and either to a large district round Calcutta, or to the immediate vicinities of the superior Provincial Courts, which arrangement need not prevent British persons from occupying indigo, coffee, and cotton factories in other places, in the same way as they now do. When I have been led into conjectures as to the future destinies of India, it has sometimes struck me, that a time might come when there would be an attempt to establish, to a certain extent, a landed aristocracy, by assignments of the land revenue of particular districts in which it has been permanently settled, with such seignorial or magisterial rights as the Government might be able and willing to annex to the grant. Whenever such assignments could be sold for more than 20 years purchas of the existing revenue, there would be a present gain to the Government, if the purchase money were to be applied in redeeming debt on which so much as five per cent. interest was payable; and if the assignments were not to be made beyond the

V. Legislative Councils; Courts of Justice; Code of Laws.

extent of the territorial debt, I do not see how any claims of property of the Company upon the territorial revenues, whether real or erroneous, could be affected one way or the other. If such assignments were to be made to persons who had been long in the Company's service in India, or to other persons well selected, there would not be much risk in letting other British persons purchase or farm lands under them. For a considerable period it might perhaps be desirable, that these grants should not be inheritable, but that although they should be of the entirety, yet a condition should be annexed for the sale by the executor or administrator within a year after the death of the grantee; certain conditions of residence in India might also be imposed.

24. In consequence of the determination respecting Penang, which is understood to have been made, it seems to have become unnecessary to say anything on the papers which relate to it. I am sorry that I have not been able to compress my observations within narrower limits, but I will not conclude them without offering my sincere thanks to the Governor General in Council, for the communication which has been made to the Judges with so much candour, and so much in a spirit of confidence, nor without expressing an earnest hope, that it may not be thought any undue advantage has been taken of this liberality, but more especially that in the vindication of the Court, which I have felt myself called upon to make, there is nothing which can tend to interrupt or impair the good will which has hitherto subsisted between the Judges and the members of the Government, for all of whom I beg leave to assure them, that I entertain a cordial esteem and perfect respect.

Garden Reach, Calcutta,
2 October 1829. (signed) *Charles Edw. Grey.*

— No. 21. —

MINUTE by the Hon. Sir J. *Franks*; dated 23 Sept. 1829.

RIGHT HON. LORD, AND HON. SIRS,

IN reply to your Letter of the 14th July last, addressed to the Judges of the Supreme Court of Judicature at Fort William, in which you were pleased to propose to their consideration, that the Members of the Supreme Government and the Members of the Supreme Court of Calcutta should be constituted a Legislative Council, with power to enact laws for the guidance of the several Courts established by the King within the territories of the East India Company, and for the regulation of the rights and obligations of all powers subject to their authority; and in which you expressed your desire that, should our sentiments concur with those entertained by you as to the expediency and necessity of enlarging the legislative powers of Government, we should state the conclusions to which a consideration of the subject might lead us in regard to the mode in which such powers could best be exercised, and the limitations to which the exercise of them could best be subjected. I have the honour to submit to you the sentiments an attentive consideration of the subject of your Letter has induced me to form.

Three questions arise upon that proposal:

1st. Whether the Members of the Supreme Government and of the Supreme Court should be constituted a Legislative Council, for the purposes mentioned in your Letter.

2d. As to the mode such powers could best be exercised.

3d. As to the limitations to which the exercise of those powers could be best subjected.

And to enable me the better to explain the grounds of the opinion I have formed upon these questions, I,

1st. Shall recur briefly to the powers given to the Governor General of this Presidency in Council;

2d. To the sources whence those powers are derived;

3d. State

3d. State over whom, and with reference to what constitutions and codes of laws those powers are exercised, and the consequent difficulty in the station of Governor General in Council, from the imperfect constitution of the Council.

1st. The powers of the Governor General and Council, are those of a government to make laws, rules and regulations, political and civil, within the Company's territories in India, (subject to such restriction as is provided by the statute 13 Geo. III. c. 63, s. 36;) and as time and occasion may require, to modify and administer those laws, rules and regulations for the public good.

2d. They derive those powers partly incident to the high offices they hold by appointment of the Honourable the East India Company, whose powers are derived to them from grants and charters of the Crown, and enactments of the Legislature of Great Britain, that confirm and enlarge the powers of the Company.

1669.—I refer first to the grant of the island of Bombay to the East India Company in the year 1669, (before that time incorporated), to them and their successors. By that grant the General Court of Proprietors, or the Governor and Committee of said Company, are empowered to make laws and constitutions for the government of said island and its inhabitants; and to impose fines and punishments not extending to take away life or member, so that the punishment should not be repugnant, but as near as may be agreeable to the law of England; and a proviso was made thereby, that the East India Company should enjoy the several powers granted thereby in all other ports, islands, territories and places they should acquire within the limits of their Charter.

I do not advert to Charters granted to the United Company between the time of the grant of that Charter of 1669, and the year 1773, because by the statute 13 Geo. III. c. 68, and 53 Geo. III. c. 155, s. 1, the whole Civil and Military Government of the Presidency of Fort William, and of all the territorial acquisitions and revenues in the kingdom of Bengal, Behar and Orissa, were thereby vested in and continued to the United Company, during such time as the territorial acquisitions should be vested in them.

A particular provision had been made by the statute 13 Geo. III. c. 63, s. 36, already referred to, whereby the Governor General and Council may make such rules, ordinances and regulations as shall appear just for the government of the Company's settlement at Fort William, and the factories subordinate thereto, such rules, &c. not to be repugnant to the laws of England, nor to be valid until registered and published in the Supreme Court.

The powers thereby given are recognized and continued by the stat. 53 Geo. III. c. 155, s. 98, by which power was given to the Governments of this and other Presidencies of India, respectively to impose duties of customs and other taxes upon all persons resident or being therein, upon all property therein, and also upon such other persons and property as are mentioned in and subject, as in that section.

The 99th section gives power to the Governor General in Council to impose fines for enforcing payment of such customs or taxes.

These are the sources from whence the powers of the Governor General in Council of the Presidency are derived. It is not necessary to refer to those of the other Presidencies.

3d. The Governor General in Council exercises these powers over British subjects, the native subjects of India, Mahomedans and Hindoos, and other persons born or resident in India, of whatever other religious sect or persuasion.

It is not necessary to observe here upon the restricted interpretation given to the words "British subjects." But it appears to me that a legitimate distribution of the people of the Company's territory will be found by classing them thus: natural born subjects of the King, subjects of the King, and aliens.

British subjects are to be governed according to the laws of England, and so far as applicable to or modified for the benefit of that portion of His Majesty's subjects in India, Mahomedans and Hindoos, according to their respective laws and institutions, and all others not Mahomedans or Hindoos, according to the law of their domicile: to that law each owes at least a temporary allegiance, and from it is entitled to protection.

It is a rule of law that statutes enacted upon the same subject ought to be construed together and taken as one code, and thus the spirit with which one law within a code has been enacted, may become a direction by which to interpret different parts of the whole.

V. Legislative Councils; Courts of Justice; Code of Laws.

From hence it may appear that the difficulties of the Governor General and Council, from the various other duties of his and their stations, as well as those imposed by such causes, are great. They have to perform with those that require the care of an empire, the application of principles of natural justice to the purposes of municipal laws, to perform at the same time the duties of legislators and lawyers, and to do so amongst a people differing from each other in language, religion and laws.

The case mentioned in your letter, as referred by the Supreme Court to His Majesty in Council, is one that shows inconvenience has been felt from an imperfect state of the law, and the want of sufficient power within this Presidency to reform and amend it as exigency may require.

A case had occurred some time before that, in which a person who had received a wound within the district and jurisdiction of the Supreme Court of Calcutta, afterwards and within a year after he had received that wound, died at the general hospital without the jurisdiction. That case was brought before the Supreme Court, and was referred to His Majesty in Council, for this reason, by the common law of England, a Grand Jury is sworn to inquire only for the body of the county, and if a man had been wounded in one county and died in another, it was doubted whether the offender was indictable in either Court at common law, because no complete act of felony was committed in either of them. By stat. 2 & 3 Edward VI. the Justices or Coroners of the county where the party died shall proceed as if the stroke had been in the county where the party died. Your Lordship and the Members of Council would not have doubted that the terms in which that statute were expressed, and the less so, with reference to the time of its enactment, were such as to prevent its being applicable to this district by any construction; and that as a case that required an extension of the law in like matters to this district, it was proper to refer it to His Gracious Majesty in Council.

To such inconveniences may be added those that had arisen and may occur because of the state of the law as to registration of such rules, ordinances and regulations as come within the provisions of the statute 13 Geo. III. c. 63, s. 36, or are referrible to it. Rules, ordinances and regulations made by the Governor General in Council, by authority of that section, "for the good order and civil government of the United Company's settlement at Fort William, and other factories thereto subordinate or to be subordinate," may after registration be laws to bind the population of countries so extensive, at least as to British subjects, yet there are not any words, save the words "Factories," to confine the authority of such laws to them. But what may be the construction given to those words or that section? It admits the making rules, ordinances and regulations that require the assent of the Governor General and Council, and registration by the Supreme Court before they become law, although under circumstances that preclude the Judges from knowing the reasons of their enactment, or the Governor General and Council from knowing, before registration or rejection of them, the reasons or causes of registration or rejection of them by the Supreme Court.

Thus a rule, ordinance or regulation, well conceived for its general objects, may be rejected, because of some particular clause repugnant to the law of England, the merits of the rule, ordinance or regulation unknown to the Judges of the Supreme Court, and the cause of rejection not known to the Governor General and Council until the moment registration was refused.

It is difficult, if possible, for Government to anticipate, by theoretic views, what laws may be wanted for good order amongst a people; those the results of experience are likely to be best, yet they are to be proved by trial, and either to keep pace with the changes of time or to be left absolute. Thus amendments become necessary, yet are unavailing, because of the distance of the Legislature of Great Britain from you, so that wants are imperfectly communicated, and cannot receive perfect redress.

Whereas, if the rules, ordinances and regulations necessary for government should be proposed and discussed previous to the promulgation of them in the presence of the Government and the Judges, the motives, reasons and ends of rules, ordinances and regulations could be considered by them all before obtruded into law, and ends beneficial to justice might be accomplished, with a concurrence in duty desirable to all, by means not repugnant to the laws of England.

My Lord and Gentlemen, I have considered your proposal with reference to the classes of society, and comparative numbers amongst whom we are placed, without anticipating what a progressive state of society may suggest to your consideration

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at a future time, and after a most attentive consideration of that proposal, have the honour to express to you that I am convinced good effects would follow from the adoption of it.

2d. The second question arising upon your letter is, in regard to the mode such power could be best exercised; and it appears to me those powers could be best exercised by constituting the Judges of the Supreme Court Members of the Council of this Presidency, together with the Governor General and Members of Council, to be with powers equal to them for the purposes only of making laws, ordinances, rules and regulations for the government of the people of all classes within this Presidency, in matters civil and criminal, provided such powers should not be construed so as to render null any law of England or Great Britain now in force in this Presidency.

3d. As to the limitations to which the exercise of those powers could be best subjected.

That no rule, ordinance or regulation should be made for the purpose of altering, amending or repealing any law or regulation for any such purpose, until notice had been previously given by order of the Governor General, or the order of the principal acting Member of Council of such meeting, to hear, deliberate and decide upon the rule, &c. to be there proposed; and that the like means for promulgation and registration of all laws, rules, ordinances and regulations now requisite by the statute 13 Geo. III. c. 63, in certain, should be adopted in all cases.

In considering the limitation it would be necessary to contrast it with the extent of the power to be given, and for this purpose it might be thought advisable to repeal the 7th section of the statute 13 Geo. III. c. 63, and 53 Geo. III. s. 1, 98 and 99, so far as relates to the powers to make laws, rules, ordinances or regulations, and provide by an enactment, that powers should be given to the Governor General and Council, to be constituted as fully as had before been given by these sections or any preceding law, and so fully as to render their powers further sufficient to the purposes and objects intended.

The Judges of the Supreme Court may be placed in a situation of great responsibility, by taking part in making such laws, rules, ordinances or regulations as may be made; and I take the liberty to suggest, if they should be appointed Members of the Council, it should be lawful for them, or those of them who should attend any Council at which any law, rule or regulation of the Governor General in Council should be made, in which the majority of the Judges who had thereat attended have not concurred, to present their protest to the Governor General in Council, in such protest stating their objections, and the reasons upon which they were founded, to such rule, law, &c. and that every such protest should be forwarded to His Majesty in Council, and to the Honourable East India Company, together with the rule or regulation to which it referred.

Objection made to.

It may be objected to the adoption of your proposal, that it would effect an union of the legislative and judicial powers, such as writers upon the theories of laws would prevent. But with the utmost deference to their opinions, the union proposed is not such as they contemplated. That proposed is not an union of the entire legislative with the entire judicial; that proposed would give participation in the legislative to the judicial, without giving judicial to the legislative; a voice to the judicial, not a will to the legislative.

The objection would not be applicable in any criminal case, because in such cases jurors are triors of facts.

Cases within the jurisdiction of the Supreme Court at the civil side are tried by the Judges without the intervention of a jury. It may be thought (as to me appears) advisable to consider whether the trial on certain cases might not be by jury; as in cases of libel, and breach of contract of marriage or seduction; and that there should be a discretionary power to the Judges in other cases to order juries, triors, to be summoned. The objection, even if it ought to avail at all at the civil side, would thus be less of force; but when it is recollected that every adjudication at the civil side, when the same exceeds 1,000 pagodas, may be reviewed by an appellate tribunal, it will appear the judicial power in this Presidency is different from what those writers had in contemplation.

My Lord and Gentlemen, I here conclude, in reply to your letter of the 14th July last, most respectfully requesting that I may be excused by you for the length to which my letter has gone, as it proceeded from a desire to lay before you the grounds of the sentiments I have submitted to you.

Several documents have been handed to me by the Chief Justice of the Supreme Court, since I received and while writing my reply to your letter. I shall now proceed to advert to them.

Answer to Minute 2, &c.

The first of these documents is a Minute, dated the 15th April 1829, signed by the Hon. Sir Charles Metcalfe, Bart.; but as it contains, in a more condensed manner, objections contained in the other documents, I shall confine the observations I am about to have the honour of submitting to your Lordship and the Honourable Members of Council, to the statements and order in that Minute. It suggests, for the reasons stated in the Minute, that it is necessary to determine whether in matters of doubtful dispute the Government or the Court of Judicature ought to be supreme. I would not venture to contend for, or maintain the affirmation of the proposition in either branch of it. It is for the Legislature of the United Kingdom of Great Britain and Ireland, in its wisdom, to consider whether the laws and institutions of England have not prescribed to the magistracy their respective duties in the gradations of society, and whether an observance of those duties must not prevent collision between them, by means not repugnant to the constitution.

Extent of Jurisdiction.

2d. That the extent of jurisdiction of His Majesty's Court of Judicature should be accurately defined.

By extent of jurisdiction of a Court, I mean such power as it may lawfully exercise over certain classes of people, within certain limits, by settled process of law.

The statutes intended to define the jurisdiction of the Supreme Court within this Presidency are, the 13 Geo. III. c. 63, s. 14, the Charter of 1774, (in effect a statute,) ss. 2, 4, 13, 14, 15, 19, 22, 23, 26, 27, qualified as to the 13th s. of the Charter by the provisions of the statute 21 Geo. III. c. 70, s. 17. It is not so important to inquire whether doubt has existed, as whether it does exist in the construction of these statutes. If there does, surely it is better to define, declare and promulge the jurisdiction of the Supreme Court. It has jurisdiction, as a Court, civil, criminal, ecclesiastical and admiralty, in distinct capacities.

Order of the Jurisdiction of the Supreme Court.

I shall refer to the institutions of its jurisdiction in this order, civil, criminal and ecclesiastical; each owes its origin to the statute 13 Geo. III. c. 63. It was enacted long after incorporation of the East India Company, and after it acquired extensive territories in India, and after it had added to the number of His Majesty's subjects who had come into India from His Majesty's dominions in Europe, the population of native subjects contained in those territories. It may therefore be supposed, that when the Legislature declared its intention, by the statute of 1773, the 13 Geo. III. to constitute a Supreme Court at Calcutta, as in the words of that statute, " to have full power and authority to exercise and perform all civil, criminal, and ecclesiastical jurisdiction," it had in contemplation, at least for purposes of prevention and punishment of crimes, other classes of His Majesty's subjects within the territories then belonging to His Majesty acquired to his dominions, besides His Majesty's subjects purely British. My reasons for supposing it had, are, that taking these sections, the 13th and 14th of the 63 Geo. III. and 13th and 19th of the Charter together, they give civil jurisdiction, according to the English law, over British subjects, within the town of Calcutta, factory of Fort William, limits thereof, and factories thereto subordinate, in Bengal, Behar and Orissa, and criminal jurisdiction within the same limits, over those and all other subjects of His Majesty.

The statute 21 Geo. III. c. 70, is more precise as to the limits of the jurisdiction of the Supreme Court; it provides that the Supreme Court of this Presidency shall have power to hear and determine suits against all the inhabitants of Calcutta, saving to natives, as by that section, the right to have justice administered to them according to their own laws. But I do not find, in that or any other section of the statute or charter, any limit to the jurisdiction given to the Supreme Court of this Presidency, as to the offences committed by any of His Majesty's subjects in the factories of Fort William, or factories subordinate thereto.

Cause of the doubt as to Supreme Courts' Jurisdiction.

The doubt left by these sections appears to have been because limits had not been fixed, or directed to be fixed to factories. It is merely a matter of mensuration in one sense, in another a matter of policy, that ought now to be determined, not by deciding what might have been intended, but what was most likely to conduce to the public welfare.

Although the law has described the limits as to place, and the classes of persons who are to be subject to the jurisdiction of the Supreme Court of this Presidency,

by

by construction of words that admit, to certain limits, the issue of its process; no process of the Supreme Court of this Presidency can issue unless signed by one of its Judges; process of the Supreme Court issues grounded upon an affidavit that the defendant is liable to the jurisdiction of the Court, by what means, and of the cause of suit.

Inhabitants.

By construction given to the word "inhabitant," not only residents in Calcutta, but also persons, natives, who have houses called family houses, or houses of business, wherein gomastahs, clerks or servants reside, have been and are held to be liable to its jurisdiction and process.

Legal use of that word.

The word inhabitants was used in the 17th section of that statute in a clause that gave jurisdiction in such matters to the Supreme Court, and it became the duty of the Court to construe and apply that word, as it had been construed and applied in England.

A person who having such a house and servants residing in it, although not a resident in it himself, must be supposed to have persons there whose duty it is to receive writings and orders left there for him, and processes of law served there, as well as any other writings or orders.

2d Lord Coke's Institute, 697.

The construction of the word "inhabitants," has arisen in England at various times, and in many instances; I shall mention one. By the statute 22 Hen. VIII. c. 5, for Repair of Bridges, it is enacted, "That if the bridges shall be without "the city or town corporate, the repair shall be made by the inhabitants of the "shire or riding within which the said bridges decayed shall happen to be."

Ibid. 702.

Lord Coke's comment upon this statute, p. 702 of the same book is, "the "persons to be charged by this statute are comprehended under this only word "[inhabitants,] which word is needful to be explained, being the largest word of "this kind; for although a man be dwelling in a house in a foreign county, "riding, city or town corporate, yet if he hath lands or tenements in his posses- "sion or manurance in the county, riding, city or town corporate, he is an inha- "bitant, both where his person dwelleth, and where he hath lands or tenements in "his own possession, within this statute."

Lord Eldon, of that word.

In the case of the Attorney General *v.* Forster, 10 Vez. Rep. 339, comments upon various interpretations are given to the word "inhabitants." The Supreme Court appears to have construed it according to law, and the exigencies of time and place.

It is now (as I conceive) understood by persons in that Court, the process of the Supreme Court may issue against British subjects and natives, actual inhabitants of Calcutta, by the statute 21 Geo. III. c. 70, s. 17, subject to the provisions of the Charter, s. 13, and also against natives not actual inhabitants, if constructively liable to the jurisdiction of the Court for such causes as mentioned.

Construction given to that word beneficial.

The consequences found to follow from such constructive interpretation of the word "inhabitants," seem to me beneficial to the public, for the reasons I shall take liberty to offer.

Because, &c.

First, because persons who have such family houses, or houses of business, although they reside in remote parts of India, obtain and gain credit, and become debtors and creditors in Calcutta, because of such constructive inhabitancy.

Second, because creditors who live in remote places may recover debts from persons who are inhabitants of Calcutta. Credit gives facility to trade, and in the relation of creditor and debtor, rights ought to be merely reciprocal as good policy admits.

Third, because of the contingencies, length of time and expenses that intervene, may cause one who should be obliged to sue another in a remote part of India, because of a debt that other had contracted with him in Calcutta. The evidence of his contract must be supposed to be where it was made; and the expenses of bringing witnesses to a distant place a large deduction from his demand.

Fourth, because the instances that most frequently occur in which such constructive interpretation has been given in the Supreme Court to the word "inhabitants," are those in which joint families, persons joint in trade, or the contract sued upon are the dependants, having family houses or of business, as banker or shroff, for such business; and in case of joint contracts of any kind, made in or to be performed in Calcutta, if actual inhabitants of Calcutta, shall be those only liable to be sued there; the plaintiff, with whom the contract was made, if not paid, must proceed by as many suits as there are separate jurisdictions of his joint debtors; leaving as to the defendant's rights to contribution, each from the other, to pay the plaintiff undetermined.

V. Legislative Councils; Courts of Justice; Code of Laws.

3d par. of the Minute. I do not believe it was the intention of the Legislature that the Indian subjects of His Majesty should be amenable to two sets of Courts and two codes of laws; nor do I think there is such double effect as stated in this paragraph. The Legislature appears to have given concurrent jurisdiction within Bengal, Behar and Orissa, to the Supreme Court, over certain subjects of suit, as by the 13th section of the Charter, and the 21 Geo. III. c. 70, s. 17, as mentioned in these sections. The system of law is more perfect in England; yet there the subject is amenable to several jurisdictions at law, to that of the Courts of King's Bench, Common Pleas and Exchequer; in equity, to those of the Court of Chancery and Exchequer at its equity side; yet no inconvenience has been found or complained of there for such cause; nor can the subject in England, or within the jurisdiction of the Supreme Court here be liable, in the same suit, to different Courts or tribunals; because, according to principles of natural justice applied to our municipal codes of law and equity, the pendency of a suit in a Court of competent jurisdiction would be cause to abate it, if made subject of suit in another.

4. I know not of the occurrences alluded to in this paragraph, save as traditions of past times.

Case of a native servant of the King of Oude.

5. The native alluded to in this paragraph was arrested under process of the Supreme Court, issued grounded upon an affidavit made by a Mr. William Morton, of a debt, because of liability, supposed from constructive inhabitancy.

By the Charter of 1774, s. 15, if a person, or any person acting for him, shall swear that his debtor is indebted to him 100 rupees current, and is subject to the jurisdiction of the Supreme Court, he thereby becomes entitled to obtain a writ of *capias* to cause the person so indebted to be arrested and held to bail, for that or whatever larger sum should be sworn to be due. The 26th Rule of the Court is, that every such affidavit shall not only aver that the defendant is subject to the jurisdiction, but in what manner, as by inhabitancy or other sufficient cause. In the case alluded to, the affidavit stated the defendant was liable to the jurisdiction as an inhabitant of Calcutta. Similar writs are issued forth of the Courts of Law at Westminster by the officers of the Courts, but not for so small sums. The Court here, (Supreme Court,) does not allow a writ of *capias* to issue, save upon affidavit that 400 rupees is due; the Court of Requests has jurisdiction to that amount.

The proceeding being to compel a defendant to appear, is from its nature *ex parte*. When a defendant has appeared, he may plead he is not subject to the jurisdiction of the Court, and the issue thereon is first tried; or he may wave the former plea, and plead he is not in debt to the plaintiff; or plead both. And although the defendant should not plead to the jurisdiction, yet the plaintiff should prove his allegation that the plaintiff is liable to the jurisdiction. So that the Court cannot know how any of these facts are before the trial of them. In the case of the native lately a servant of the King of Oude, he took issue upon both averments; and that of jurisdiction, first tried, was found for him. The decision of the Court, therefore, in effect was, that they had not jurisdiction to try the case of that nature.

He having so far succeeded, obtained an information (a proceeding for an offence charged) against the plaintiff, Mr. Morton, who had caused that arrest, and others his alleged associates for a conspiracy, to charge him, the native, with a debt, or have him thereupon arrested. In such a proceeding, malice is an integral part of the offence. But if the prosecutor in the information was in fact indebted to the plaintiff in the action at the time of the arrest of the defendant in the action, the charge of malice was answered. Thus the question, whether debt due or not, incidentally arose. There was evidence to show the defendant was indebted at the time of the arrest to Mr. Morton, the plaintiff. He since then died. But until the question shall be tried (if it ever should) in a direct issue between those who represent him, and that native, it cannot be known the allegation of the debt was false.

6. The charge is general, I know not to what it alluded; no bond can authorize seizure of property as therein stated, unless judgment had previously been obtained upon it, and execution thereon issued, without statement of the facts, however a presumption ought to exist if there was a bond, and judgment upon it, either that a suit upon the bond was not defended or that judgment was had by consent, or possibly upon a verdict after trial of the merits.

Upon paragraph 7, I request permission to refer to the reply of Sir Charles Grey, Chief

Chief Justice of the Supreme Court, to the Minute upon which I at present have the honour to observe, for a statement of the case referred to in that Minute. My reasons are, he was the Judge who presided in the ordinary course of business during the sessions for criminal business at which that case was tried.

The course of business at the sessions for such purpose is, that all the Judges sit during the charge to the Grand Jury, of the Judge who presides.

The other Judges retire after the preceding Judge has charged the Grand Jury, and unless upon a trial upon an indictment for the crime of murder, or some case that may require the attendance of all the Judges, they do not meet again upon the affairs of that sessions until they have been concluded.

Whereupon all the Judges meet in chamber, to hear the reports of the Judge who had presided, and decide upon the sentence that ought to be pronounced upon each person who had been convicted before him during the preceding sessions.

At the close of those sessions, the Chief Justice read his notes of that case to his brethren, and suggested to them to consider whether it would not be right humbly to submit the facts of it to the consideration of His Majesty in Council.

The suggestion of the Chief Justice was approved by his brethren. It appeared to them, that as doubts were spread as to the jurisdiction of the Court, and as grounds to sustain such doubts were to be found in the Charter, it was better to refer the case, with the respect due to that high tribunal, to the Court of Appeal from the decision of the Supreme Court, that by the authority of the adjudication of a Court of ultimate resort, the law should be so declared as to prevent doubt upon such case in future.

The case alluded to was thereupon signed by all the Judges, for the purpose of being humbly submitted to the adjudication of His Majesty in Council; and I most respectfully expressed my hope, that after the facts of that case shall have been referred to, they may appear sufficient to show, the Judges who so acted were under the impression of a proper caution in the administration of justice, and not acting under the influence of a desire to extend the jurisdiction of the Supreme Court of this Presidency. I do not know to what the statement in the 8th paragraph alludes. A Court of Equity, in the exercise of its jurisdiction, acts in *personam*, and, because of its jurisdiction over the person of a party to a suit, may have jurisdiction over property without the jurisdiction. The jurisdiction over persons may be (as has been shown), because of constructive residence. The statement in this paragraph, as to European Receivers, alludes to matter not brought to the notice of the Court; I know not of them; of the Receivers as appointed by the Court I shall make some observations in progress.

The orders of Court are void as to persons not parties to suit, or served with its order.

I concur in the statement in the Minute, that a clear definition of the extent of the Court's jurisdiction, with respect to native subjects resident beyond Calcutta, is required. The sum of my reasons is, that when the statute 13 Geo. III. was enacted, the British subjects of His Majesty "were but a few of them, and they strangers in the land."

They are described in terms that cannot be misapplied, when the words British subjects are used, in statute 13 Geo. III, c. 63, s. 14; but in that section the words "subjects of His Majesty" are used; so in the 13th section of the Charter of 1774.

The 19th section of the Charter appears to me to have been intended to make all persons within the limits of Calcutta, factory of Fort William, and subordinate to it, amenable to the jurisdiction of the Court, as to offences.

These sections are referrible to the times in which they were enacted, and account for doubts that may exist as to classes of persons over whom the jurisdiction of the Court should extend; but if the limits of the factories of Fort William, and thereto subordinate, should be marked out, and the construction put by the Court upon the word "inhabitants" acquiesced in, or it should be defined, I apprehend any questions that cause disquiet upon these topics would be set at rest.

I had already had the honour of submitting to you what occurred to me upon the interpretation of that word, and the consequence that might follow from taking from the Supreme Court its jurisdiction over "inhabitants" in a constructive sense, such as has been explained. Page 27. Page 30, 31.

The latter part of the 8th, and whole of the 9th, relate to Madras; the 10th, 11th and 12th paragraphs to Bombay.

Declaration that the Judges do not desire to extend their jurisdiction.

I beg leave to observe upon part of the 12th paragraph; it applies to a supposed desire of the Court to extend its jurisdiction. I assure the honourable Baronet I have not been, nor do I believe my brethren have, or are desirous to extend its jurisdiction. The duties of their office place them in a situation that sometimes make their refusals of applications seem a denial of justice, and at other times subject their compliance, under circumstances that require it, to the censure of an encroachment of jurisdiction; each case ought to be judged of by its facts and circumstances, and the Judges of the Court by what is apparent and probable. Their occupations are many and continued, in an exhausting climate; and, conscious of their responsibility, they are more anxious to perform their duties than to extend their jurisdiction.

To the considerations suggested 1st, 2d, paragraph 12, I have already submitted such observations as occurred to me.

The observations that follow in paragraph 12, lead to a statement of the classes of persons subject to the jurisdiction:

1. British subjects; 2, 3, 4 (front).

Inhabitant, to define, not necessary.

It appears to me an accurate classification.

But I take the liberty to say, it appears to me rather advisable than necessary to give a distinct definition to the term "inhabitant." The law of England, and the interpretation given to that word by the Supreme Court of Calcutta, leave it now without doubt. It has been applied by adjudication to persons who reside out of Calcutta, however distant, if within the Company's territories, and that the cause of their being held so liable is their having houses and servants in their pay residing in them, within Calcutta. It thus becomes a question of expediency, whether the law is to remain as received by the Court, or altered as to constructive jurisdiction upon which it has acted.

Arrests in territories of Native Princes.

The Minute states that the law ought to be declared as to acts committed within the territories of Native Princes.

The suggestion probably arises from the statute 33 Geo. III. c. 62, s. 66; I have not heard of the case alluded to.

That statute must have been enacted for the vindication of Native Princes, and it may be approved, that their magistracy should concur in giving operation to it. Thus, provided that no arrest of a British subject, charged with an offence committed in the territory of a Native Prince, should be lawful, unless the warrant for his arrest, lawfully issued forth of the Supreme Court, had been endorsed by a magistrate of competent authority within the territory of such Prince, to authorize an arrest for such an offence.

The Minute states, that process of the Supreme Court ought to be executed by the local magistrates, and by the officers of the Supreme Court.

Receivers.

The process alluded to I take to be that of sequestration, or effected by appointment of a Receiver. The effect of appointing either is the same as to the lands of the party. Such officers (for by appointment they become so far officers of the Court) are authorized by the orders that appoint them to receive the rents or other property liable by the process of the party against whom it issues.

The object of such process is to compel a party who has disobeyed the process, decree or order of the Court, to be obedient to it, or in cases of doubtful right appearing upon the answer of a defendant to a suit, to have the rents or other subject of the suit, where of nature to admit it, paid into the Accountant General's hands, and placed in bank to credit of the pending cause, in *usumjus habuistis*.

Before appointment of such officer, the Court refers it to the Master to appoint a proper person, who gives security to perform the duties of it. In the Supreme Court an officer of the Court is, upon consent of parties, appointed Receiver; but the party upon whose application a Receiver is appointed may nominate who he pleases, subject to such approbation.

After the rents or property have been placed to the credit of the cause by such means, it becomes competent to parties in the cause, or persons who have prior right to the property seized, or subject to the Receiver, to apply to have their rights referred to the Master to be ascertained, and themselves paid. An order is thereupon made, that the Receiver shall account, and the report of the Master bringing before the Court the state of the funds, and right of the applicant, an order is accordingly made. If there should not be funds so applicable, the party who had applied is left, as before, not affected as to his right or remedy, by any order the Court had made.

It is necessary the person who should receive money to be so applicable, should be daily liable to the orders of the Court, and to answer for a contempt of Court, in case of disobedience to any of them.

Should officers or local magistrates of the Mofussil be appointed sequestrators or Receivers, they would become thereby, *ipso facto*, officers of the Supreme Court in the causes in which they should be appointed, and subject to imprisonment for disobedience to its orders. If local magistrates or officers, not officers of the Court, were to act as sequestrators or Receivers, it would not have jurisdiction over them.

Registration of Decrees in the Mofussil.

The Chief Justice of the Court (Cortety) advised that decrees or orders, whereby lands in the Mofussil were to be made subject to Receivers, should be registered in the Native Court of the district where the lands lay. The object was to give notice of the decree, and prevent surprise. To register the decree would give notice of its object. As to lands in the Mofussil, it could not be registered without consent of the Government, nor could the mere registration of it affect any prior right.

As to principal jurisdiction, subjects partly European, part Asiatic, to be subject to British law;

I entirely concur in the recommendation of the Minute, that it would be better to place the class of subjects partly European, partly Asiatic, on the footing of British subjects as to the criminal jurisdiction: it would be received by them most probably as a privilege.

British subjects, as to civil, to the local;

I concur in the opinion expressed in the Minute, that as to contracts beyond the local jurisdiction of His Majesty's Courts in these provinces, British subjects ought to be subject to the local jurisdiction; and as to acts or contracts done or made, or lands situate within the jurisdiction (limits of Innan,) of the Supreme Court, British subjects ought to be subject to the jurisdiction of that Court. I however beg leave to suggest, that the removal of the party into either jurisdiction ought to make him subject, as to debts and contracts, to the authority of its Courts, because credit is personal, and liability to debt or contract follows the person to whom it was confided.

Subject however, &c.

Supreme, to be a Court of Appeal.

I have for some time thought, and have the honour also of expressing concurrence in the opinion expressed in the Minute, that the Supreme Court, constituted a Court of Appeal from the decrees of the higher Local Courts, might, under modifications, be productive of public benefit. Upon this subject, so important, it may be thought advisable to consult the retired Judges, who now in England have much information and experience as to the constitution of the Supreme and Local Courts in India.

Benefit to be expected.

The benefit to the public I should expect from such a constitution of the Supreme Court, would be, that still preserving to His Majesty's British subjects in India the right and administration of English law, a Court so constituted for such purposes would promote inquiries in judicial proceedings according to English law of evidence, and attain greater uniformity of decision; subsidiary alterations, as supposed by the Minute might be expected to follow.

Rules of evidence, in every state, are modes of inquiry into truth, and tend to that end most directly by the testimony of credible witnesses, and relevant documents.

The rules of evidence of the laws of England are not voluminous, considering the various jurisdictions and classes of subjects to which they relate, its tenures, commerce, revenue, contracts, offences committed within its territories, and some even without them, its Justices of Peace, and summary, as well as plenary authorities. The rules of evidence would be considered concise, if referred to each head to which they might be applied. The rules of evidence of Mahomedan and Hindoo law are far behind where either law prevails, sometimes giving credit to the greater number of witnesses, and sometimes rejecting them because of kindred.

The laws of succession to lands in different countries owe each their origin to some particular cause, feudal or commercial. In India the laws of succession seem to have been produced from suggestions of nature to provide for offspring, widow, and kindred, and they prescribe rules for partition amongst them.

The laws of contract of most countries have resemblance to each other, to have been the result of like necessity, and progression of causes.

Service and hire, buying and selling, loan and pledge, mortgage, &c. relations of contracting parties, that each suggest a necessity of duty, are common to the laws of England, Mahomedans, and Hindoos.

I apprehend the rule as to liability to jurisdiction of an executor or administrator is, as supposed, to be the correct rule by the Minute; that persons in such relation

V. Legislative Councils; Courts of Justice; Code of Laws.

ought to be subject to the jurisdiction, because of such debts or contracts of the deceased, as they may as his representatives be held liable to perform such as plainly and necessarily arising out of, are incidental to the inquiries to which such debts and contracts give rise, and none other.

(signed) *John Franks.*

— No. 22. —

MINUTE, by the Hon. Sir *E. Ryan*; dated 2 October 1829.

RIGHT HON. LORD, AND HON. SIRS,

IN reply to your letter of the 14th of July 1829, I have the honour to communicate the opinion which I have formed on the expediency and necessity of enlarging the legislative powers of Government, of the mode in which I conceive such powers can best be exercised, and the limitation to which the exercise of them should be subjected.

I have not, however, felt it necessary to confine the expression of my opinions to the nature and construction of the proposed Legislative Council; the papers which were under the consideration of Government, and which accompanied their letter, have induced me to enter into other matters connected with the administration of justice in India, and to explain some instances in which the Court is supposed to have exceeded its jurisdiction, and as to which, it appears to me, much mistake and misapprehension has existed in the minds of some of the Members of Government.

I have found it most convenient to arrange what I have to offer on these subjects under the following heads:

I. The inconveniences and evils attendant upon the present imperfectly defined jurisdiction of the King's Courts in India.

II. The alterations in the judicial system of India which a free admission of Europeans would render necessary.

III. The expediency and necessity of enlarging the legislative powers of Government.

I.

Upon many of the questions relating to the jurisdiction of the King's Courts in India it would not have occurred to me to make any observations had they not been presented to my notice by the papers which accompanied the letter, and particularly by the Minute of Sir Charles Metcalfe. I feel, however, that it is desirable that the Judges should give the fullest explanation in their power of the views they take of what has appeared so objectionable in the supposed assumption of jurisdiction.

1. A recent appointment by the Supreme Court of a Receiver to collect the rent of land in the Mofussil, which had been apportioned under a decree of partition, appears to have led to the consideration of the general question, whether the Supreme Court has jurisdiction over immoveable property in the interior of the country in all cases in which the possessor or owner is personally subject to its jurisdiction.

Many supposed cases of evil likely to arise from the exercise of such a power have been stated, and there appears to be a general opinion entertained by the Members of Government, that neither the Charters nor Acts of Parliament confer on this Court the power which it has assumed over land in the provinces.

That there is little or no reason to apprehend that any great practical evil has as yet arisen, may be safely inferred from no instance of the kind having been mentioned, although the Court has exercised this jurisdiction from its first establishment. The Minutes of Mr. W. H. Macnaghten and Mr. Hogg have satisfactorily shown that neither the revenues of the state or the occupiers of the land are in any way prejudiced, and that the fears which are entertained are chiefly founded on mistaken notions of the control which the Court exercises over the Collectors and occupiers of land. But without stopping to consider evils that have not arisen, and which, if likely to occur, might easily be avoided, with the assistance which I am sure this Court would receive from the Local Government, I proceed to the more general question, whether the Court has exceeded its jurisdiction.

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The 13th section of the Charter of 1774 gives the Supreme Court power and jurisdiction to determine all actions and suits of what nature or kind soever, &c., or any "rights, titles, claims or demands of, in or to any *houses, lands* or other things, real or personal, in the several provinces or districts of *Bengal*, Behar and *Orissa*, or touching the possession or any interest or lien in or upon the same, and all pleas, real, personal or mixt." It then goes on to specify the persons against whom such suits or actions may be maintained. The 14th section empowers the Court to give judgment between the parties to such suits. The 15th section authorizes the Court to issue writs of execution to the Sheriff, commanding him to "seize and deliver the possession of houses, lands or other things recovered in and by *such* judgment, or to levy any sum of money which shall be *so* recovered, by seizing and selling so much of the houses, lands, debts or other effects, real and personal, of the party against whom such writ shall be awarded, as will be sufficient to answer and satisfy the said judgment, or to take and imprison the body of such party or parties until he or they shall make satisfaction, or do both, as the case requires."

From the express words of the Charter, from the constant usage of the Court, from a similar construction having been put on the Charters at Bombay and Madras by the Judges of those places, from the absurdity which would follow in giving the creditor the right to imprison his debtor, but not to take his property, I cannot entertain a doubt that this Court has, and that it would be an anomaly if it had not, jurisdiction over immoveable property in the provinces, in all cases in which the person interested in such property is personally subject to its jurisdiction. I must confess it is with some surprise that I find such strong statements of the Court's interference with landed property in the provinces being an encroachment not contemplated by the Legislature or the Charter, after the Government has so long been in the possession of the views of those on whose opinions they would naturally rely in matters of this nature. The Advocate General at this Presidency in 1805, Mr. Robert Smith, says, "It is perfectly clear that property throughout these provinces is liable to the process of the Supreme Court, wherever the proprietor is subject to its jurisdiction." "It is equally clear," (he adds) "upon the most acknowledged principles, that in cases of dispute whether the proprietor be or be not subject to its jurisdiction, or whether property attached by its process be or be not subject to its jurisdiction, or be or be not the property of a given person, these questions of fact must necessarily be tried before the Supreme Court itself; that the only way of contesting them directly, and procuring them to be countermanded or annulled, is by an application to that authority; and that a forcible resistance ought to be prevented as a breach of the peace." In 1818, Mr. Machin, Advocate General at Bombay, and Mr. Spankie, filling the like office at this Presidency, gave opinions to the same effect.

Doubts having arisen at Madras as to the exercise of this power;

The Court of Directors in 1823 took the opinion of their Standing Counsel, Mr. Serjeant Bosanquet, who says, "there can, I apprehend, be no doubt that the jurisdiction of the Supreme Court does extend to the attachment and sale of property belonging to persons subject to its jurisdiction, wherever situated."

2. Another instance in which the Court is supposed to have exceeded its jurisdiction is in the extended construction it has put on the word "*Inhabitant*." As a practical instance of the evils arising from such an extended meaning of this word, the case of Morten *v.* Mendy Ally Khan is alluded to in the Minute of Sir Charles Metcalfe; this cause was tried since I have had the honour of a seat in the Supreme Court.

The jurisdiction was successfully contested by the defendant, and he was decided not to be an inhabitant of Calcutta, because it was not *satisfactorily* shown to the Court that he occupied, by his servants or gomastahs, a house in Calcutta, in which his servants or gomastahs carried on business on his account. There was conflicting testimony as to these facts; some evidence was given of the existence of the debt which the plaintiff claimed; but that question was not entered into fully, it being unnecessary to proceed farther after the Court had decided the defendant not to be subject to its jurisdiction. The defendant did reside at a considerable distance from Calcutta; but it has not, to my knowledge, ever been shown that the debt, on which an attempt was made to arrest the defendant, was not legally due. I am free to admit "that this Court has powers which were not expected at first to have so wide a range; and when, in rare instances, they are called into action at vast distances, that they may be at once ineffectual and inconvenient;" but this

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V. Legislative Councils; Courts of Justice; Code of Laws.

objection the Court has not the power to remedy. It may seem "an outrage to common sense to call one a constructive inhabitant of Calcutta who has never been within many hundred miles of the place;" but it certainly is no new doctrine invented by the Judges of the Courts of India for the purpose of extending their jurisdiction: for in my Lord Coke's time it was decided, that a man living in Cornwall may, to many purposes, be an inhabitant of London; and that learned person held, that for the purpose of contributing to county rates, under the statute of Bridge, occupiers of lands, though wholly residing in a foreign country, are assessable as inhabitants.

The most distinguished lawyers of modern times have sanctioned these opinions. Lord Eldon says, "this word is capable of a larger or more limited interpretation; the construction is always to be made with reference to the nature of the subject." "That inhabitancy might refer to residence, or it might be wholly independent of it." "The word inhabitant (says Lord Tenterden, the present Chief Justice of the King's Bench), like many other words in our own and other languages, varies in its import, according to the subject to which it is applied."

Sir Charles Metcalfe thinks, "that persons residing elsewhere, who formerly have resided within the local limits, must be amenable for acts committed during their residence within the limits, but ought not to be so for acts committed within the jurisdiction of the Provincial Courts, or elsewhere beyond the local limits of the Royal Court's jurisdiction." The charters of the Mayor's Court of 1726 and 1753, expressly provided that persons resident at the time the cause of action accrued, as well as those who are resident when it is commenced, should be subject to the Court's jurisdiction. Natives who have traded in Calcutta and have afterwards absconded, have been held subject to the Court's jurisdiction for contracts entered into during their residence. This would be conformable to Sir Charles Metcalfe's views, and also to the express provisions of the charters of the Mayor's Court; and yet this equally deserves the name of *legal hocus pocus*, or *legal legerdemain*, with other cases of constructive inhabitancy; for the party is no longer *resident* within the assigned limits, and cannot therefore, in the common meaning of the term, be called an inhabitant. But this, which Mr. Serjeant Bosanquet states, in the opinion to which I have before alluded, "to be a very reasonable ground of jurisdiction," I admit is very different from the case of a person like Mendy Ally Khan, who had never been in Calcutta in his life. I will not enter upon a legal argument to show that the Court is borne out by authority and principle in the interpretation that it has given to this word, when it includes in its meaning persons who may never have been within the local limits of Calcutta. "Actions (as Mr. Serjeant Spankie observes, in an opinion given to Government) against shroffs at Benares, Patna, &c., who have koties in Calcutta, managed by the gomastah, though the principals never were in Calcutta in their lives, occur daily, and such circumstances have ever been considered a settled ground of jurisdiction as inhabitancy." But leaving the question of technical law, which appears to be so unintelligible, would it be equitable or just, as Mr. W. H. Macnaghten observes, "to allow a man to enter into all kinds of commercial engagements, and to exempt his property from the liability to which he has subjected it, simply because he does not happen to be in the same spot where the contract may have been entered into?" Must the creditor leave the spot where the evidence of the contract is, and follow the person of his debtor from zillah to zillah; or if his property (as with native bankers is constantly the case) is situated in different districts, subject to different Courts, must the creditor employ vackeels or agents to sue in each, and be subject to all the vexation and annoyance of a multiplicity of suits, instead of one; and if he happens to be a British subject not allowed by the law, as it at present exists, to stir without licence farther than ten miles from the Presidency, may he not be wholly unable to select agents in whom he can confide in such Courts? It is to be feared the best that can be selected not unfrequently listen to the proposals of the opposite party, and neglect the interests of their client. I am sure that no restriction would be imposed on the British subject seeking his debtor in the provinces; but when the Judges were called upon to construe the charters and statutes which give the Court jurisdiction, the intention of the whole must be taken, and such inconveniences and evils could not be overlooked. "It may be said (Sir Edward East observes), that the creditors have a remedy in the Provincial Courts; but such is the state of business in those Courts, the uncertainty of the system of law, and the delay and vexation of a protracted attendance, that many persons prefer to abandon their just demands rather than pursue them there;

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an evil that must naturally increase with the increasing population of the Indo-British dominions, and is much aggravatrd by the accumulated arrears of those Courts." I feel confident the only safe construction of the term "*inhabitant*," is that which the Court, in the instance complained of, has adopted, and that any other would have led to much fraud and injustice.

3. Another instance of extended encroachment, on the part of the Court, mentioned by Sir Charles Metcalfe, is the case of Khoda Bhuksh and others. I forbear entering into this question here, because the Judges have put the Government in possession of their views of this case, and of the important questions which arise out of it; from which I am sure Sir Charles Metcalfe will perceive that he was somewhat premature and unguarded in casting imputations upon the Judges of so grave a character, founded, as it would now appear, upon information altogether erroneous.

3. It is thought objectionable that natives (not otherwise subject to the jurisdiction of the Supreme Courts), who apply for probates of wills and letters of administration in order to authenticate their title to property, have in consequence of such acts been held liable to the Court's jurisdiction. A case of this kind, which occurred at Madras some time since, is mentioned by Sir Charles Metcalfe.

It is not my intention to enter into the facts of that case; but as the Court here, to a limited extent, has assumed a similar jurisdiction, it is necessary to state the view I take of this question. This Court has for some time held, that all natives obtaining probates of wills or letters of administration, though not inhabitants of Calcutta, or otherwise subject to the Court's jurisdiction, make themselves by such acts liable to all suits and actions relating to the property of the deceased testator or intestate: that they are generally amenable to the Court's jurisdiction, has, I believe, never yet been held in this Presidency.

A practice has certainly prevailed for some time of granting letters of administration or probates of wills to natives; but the ecclesiastical jurisdiction of the Supreme Court, and the right to grant probates or letters of administration, is in terms expressly confined to "British subjects." It is probable that this practice has become prevalent, owing to the refusal of Government to pay money without the representatives of deceased Hindoos or Mussulmen can thus authenticate their title. "In a late instance," says Sir Edward East, "where the Government had reasonably refused to pay money to one who claimed to be the representative of a deceased Hindoo entitled to it, without assurance of his representative character, I could devise no better method, in justice to both parties, than to admit him at his own request to deposit the will as in registry with the registrar of the Supreme Court, on the ecclesiastical side, and to administer a voluntary oath, at the Hindoo executor's request, verifying the will and his own representative character. But by way of precaution, and that no person might be induced by it to attribute a greater authority than belonged to such an act, I directed the registrar to draw up the verification in writing, which was to be given to the party by way of memorial of his claim, as having been made *voluntarily*, and noting that the will was *not registered*, but voluntarily deposited as a registry."

The Court having no power to grant probates or letters of administration to deceased Hindoos or Mussulmen, although the party applying may be a native inhabitant of Calcutta, and it having been uniformly held that no such authority is necessary to establish the title of parties who sue in the Supreme Court as the representatives of such persons, I am unable, although I speak with the greatest respect and deference to my learned brethren who are of a different opinion, to see how an extrajudicial proceeding on the part of the Court, totally unwarranted and unauthorized, can make persons subject to its jurisdiction, although such proceeding may be at the request of the party who is thereby held to render himself amenable.

This view of the law was formerly taken by the Supreme Court at Madras in 1815. The Court *then* held that the taking out of probate of a will by a native, not an inhabitant of Madras, did not make him subject to its jurisdiction, even with reference to matters relating to the will; and the Judges also thought it wrong to grant probate where it could not punish a party guilty of perjury in obtaining it, nor call him to account for a mal or mistaken administration of his trust. According to the opinion I have formed of this exercise of jurisdiction, I am bound to say that the Court has exceeded its powers, and that the observations of Sir Charles Metcalfe are in this case well founded.

V. Legislative Councils; Courts of Justice; Code of Laws.

5. It is not my intention to enter into any explanation of the objections which are contained in the Minute of Sir Charles Metcalfe to certain proceedings of the Courts at Madras and Bombay. I feel that it would be more respectful to the learned persons who preside over those Courts that I should abstain from reviewing their proceeding, with which indeed I am not sufficiently acquainted to speak with accuracy.

From similar motives I abstain from making any observation on the papers relating to the Recorder's Court at Penang, particularly as it seems not improbable that the proceedings of that Court may become the subject of inquiry in England.

6. As a remedy for evils which may arise from the Supreme Courts in India assuming a jurisdiction which the Government may think they do not possess, it is proposed by Sir Charles Metcalfe that there should be vested in the Government the power of calling upon the Court to explain the grounds of its proceeding; and if, notwithstanding any explanation they may receive, they remain convinced of the illegality of the supposed extension of the Court's powers, they should have a right to appeal, *and* in a case which *they may judge* to be of sufficient importance, the power of arresting the progress of the encroachment pending the result of the appeal.

For the first part of the suggestion, namely, that the Court should explain the grounds of its proceeding, there can be no reason for any legislative enactment; it is the practice of all Judges in English Courts of Justice to explain the reasons on which their decision is founded. In the Supreme Court of this Presidency it is the custom of the Judges, where the parties have the power and are desirous of appealing, to deliver, if requested, their judgments in writing, in order that they may be transmitted to the higher tribunal if the parties think fit. That the Government should have the right to appeal, in any instance in which they thought the Court had exceeded its jurisdiction, would be a course to which the Judges could in no way object; on the contrary, it would be a satisfaction and relief to them to have all doubtful points settled by the highest tribunal; but in civil proceedings the suitors might have interests with which the course proposed to be adopted might interfere, and as regards them this power would require to be exercised with some limitations and restrictions. The only part of the proposal which I think objectionable is, that the Government should have a discretionary power of suspending the functions of the Court whenever they may deem it expedient. To invest the authorities here with such a power would be contrary to all principles of English Government as exercised in the other colonial possessions of the Crown, and possessed only by the most despotic governments in the world.

The necessity of the separation of the judicial and executive power is the commonplace of all text writers on the English law and constitution, and I confess I can see nothing in the constitution and powers of the King's Courts in India, or in the circumstances of the country in which we are placed, which could authorize so dangerous an infringement of all first principles of British Government. That the jurisdiction of the King's Courts should be accurately defined, and that its powers should be restricted and limited in such way as the Legislature shall think most beneficial for the interests of all concerned, is most desirable; but the law having been fixed, it cannot be left in uncertainty as to who are to be the persons to interpret it: some set of persons must be assigned for that purpose. If the Judges appointed by the Crown are to be the interpreters, their judgment must be final, until reversed by some tribunal empowered to review their decision. By the Charters of the Mayor's Courts of 1726 and 1753, the suitors of the Court in civil proceedings had the power of appealing to the Governor and Council, whose decision was final, if the subject matter in dispute did not exceed 1,000 pagodas; but in case it exceeded that sum, the parties had a right to appeal from their decision to the King in Council.

An attempt to introduce a similar provision was made by Mr. Sullivan in 1772, but his bill was thrown out, and the Act of Parliament passed which authorized the Crown to grant the present Charter, making the appeal direct to the King in Council. It is obvious, therefore, that the Legislature at that time did not think it fitting that the decisions of the Supreme Court should be reviewed by the local Government, even in a legally constituted Court of Appeal, though Courts of this description, of which the Governor and Council are members, exist in most of the other colonies. If the Parliament should vest in persons here the power of making

making laws for all classes of His Majesty's subjects, then indeed there would be a ready and constitutional means of avoiding all difficulties that could arise from any interpretation being given to the laws which was thought injurious to the interests of the State; and even without such a power, I do not mean to say that some great question of state necessity or expediency may not make it incumbent on the Government to interpose its authority, and to prevent the law taking its course; but these emergencies are of rare occurrence, and are of course only to be justified by the particular circumstances of the case, as are like infringements of the law in England, for which, where the necessity is apparent, Parliament indemnifies the Government against the consequences of their act.

7. Although I have attempted to explain some mistakes and misapprehensions which I conceive to exist, as to the jurisdiction which the Court exercises, I am free to admit that, on several important points, our jurisdiction is involved in doubts, which have given rise to questions of a very embarrassing nature.

Our letter of the 18th of May, addressed to the Secretary of the Board of Commissioners for the Affairs of India, a copy of which was transmitted to the Governor General in Council, will have explained, at some length, many of the difficulties which have occurred to the Judges on the interpretation they are called upon to give to the Charter and Statutes, as regards the jurisdiction which we possess as a Court of Oyer and Terminer.

The civil jurisdiction is not more accurately defined; and, as an instance of the difficulties in which we are placed, I could only refer to words of constant occurrence in all the Charters and Acts of Parliament relating to this country, namely, "*British subjects*," which are supposed to have a distinct and definite meaning, well understood by all who have been concerned in the administration of justice in the Supreme Courts of India. That the meaning is not so clearly ascertained, but is involved in great obscurity and perplexity, I need only refer to the statements in the letter to which I before alluded; and, in further illustration, I would ask, are the King's subjects born in his other colonial possessions to be included within the term "*British subject*," so as to be liable to the Court's civil jurisdiction?

That the term "*British subjects*" is strictly applicable to this class of persons, there can be no doubt. *Nemo potest exvere patriam* is a maxim of our law. The doctrine of allegiance is founded on a mutual compact between the Crown and the subject, and it cannot be dissolved by either without the concurrence of the other. Are this class of persons, when resident in the provinces, to be subject to the jurisdiction of the Court, because they are born in other territorial possessions of the Crown; and are native Christians to be excluded? "In what condition," says Sir Edward East, "are native Christians, if they be not British subjects? They are native born, and cannot be debarred from colonizing in their native and only country. What is the law of inheritance, or succession, or marriage, out of the precincts of Calcutta? Can the Hindoo or Mahomedan law be administered to them as Christians? Under what law are the illegitimate children of British fathers to be governed? What are the laws applicable to Portuguese, Armenian, and other native Christians in the Provinces?" "That Christian Judges (Sir Charles Metcalfe observes) should try Hindoo prisoners according to Mahomedan law, seems sufficiently absurd; but that Christian Judges of British blood should try Christians of British extraction by Mahomedan law, seems, if possible, still more strange."

It is true that the law and legislative Government of every dominion equally affects all persons and all property within its limits. Whoever purchases, lives or sues there, puts himself under the law of the place; this rule is generally simple and plain in its application. The laws of a conquered country remain in full force until they are altered by the conqueror; but the King has the power to alter the old laws and introduce new. What is the condition of the provinces in this respect? That the British law has been introduced throughout all the territories of the Crown as regards British subjects is clear; but natives, from a peculiar signification which these words possess in this country *alone*, are held not to be within the meaning of that term. "Although" (as Sir Edward East observes) "in strictness of law all the native inhabitants within the Company's territories are subjects of His Majesty, and therefore, in an enlarged sense, might be considered to be '*British subjects*,' in like manner as a native of Ireland even before the Parliamentary Union was as much a British subject as a native of Great Britain; that is, they are

V. Legislative Councils; Courts of Justice; Code of Laws.

native subjects of the British King and Crown, though under different administrations of Government, holding authority under the same Prince; and this, which could never have been seriously questioned after the supremacy of the King of Delhi became purely nominal, is now put beyond all doubt by the formal declaration of the Legislature, in the Act of the 53d Geo. III. c. 155, which asserts the undoubted sovereignty of the Crown over the Indian territories."

Do the old laws of the country, the Mahomedan and Hindoo codes, remain (modified and altered in some respects by the conquerors) applicable to all classes of persons, whether Christians or infidels, and every species of property within the limits of the King's dominions, except that particular class of subjects distinguished by the word "*British?*" or are these laws applicable only to that class of the King's subjects who are infidels, and are all Christian subjects of the King, not included in the term British, as well as foreigners and others residing in the provinces, to be governed by the law of England?

The difficulty arises from two systems of law being in force within the same dominions, and within the same parts of those dominions; otherwise the application of the general rule would be sufficiently simple.

If the old laws of the country remained unaltered, and the King had not introduced new laws, all persons within these dominions would be subject to the same system of laws, except where they were against the laws of God; and in cases where they were rejected on that account, or were altogether silent, the conquered country would be governed according to the rules of natural equity.

But the laws are altered, and a new system partially introduced; and the difficulty is to say, under which set of laws Christians, not being British subjects, according to the technical meaning of that word, are to be governed.

Upon questions of this nature, involved in the greatest obscurity, does the jurisdiction of the Court not unfrequently depend.

Other inconveniences are sufficiently obvious. The great extension of the British territories since the Charter of 1774, has given to the Court a range of jurisdiction which, at places remote from Calcutta, can only be considered a mockery of justice, if it be not the means of fraud and oppression. There can be no doubt, therefore, that difficulties and inconveniences are constantly arising from the undefined and uncertain state of the Court's jurisdiction, which are like perplexing and harassing to the suitors, the Judges, and all who are concerned in the administration of justice.

II.

The alterations in the judicial system of India which a free admission of Europeans would render necessary.

If the views of the Governor General and the Members of Council should be adopted by the authorities in England, and "it should be thought essential to the best interests of England and of India, that an increased facility should be given to Europeans to settle in the interior, and to acquire landed property;" I entirely concur in the opinion expressed by Government, that "serious inconveniences must be experienced, unless the persons allowed to settle are made subject, with the rest of the inhabitants, to the authority of the local Courts." It cannot be presumed that in a country where the population is so dense, and the wages of labour so low, that if Europeans of all descriptions should be permitted freely to resort here, that they will be able, under a tropical sun, to compete with the native labourer; all such experiments must fail. "A labouring class, who should attempt to settle, must perish." It is the free introduction of European capital and skill which the Government appear to think so desirable for cultivating the resourses of India, and it does not seem probable that the settlers will for some time be numerous. "So far indeed" (Minute of Governor General) "from fearing too great an influx of Europeans, I confess my apprehension is, that no encouragement we can hold out will induce them to resort to India in the number that seems to be desirable."

But although the numbers who may resort here may not be great, the capital that may be invested in commercial and agricultural speculations may be large, and scattered over a vast extent of territory. To leave the European owner or occupier of lands, or the manufacturer, at great distances from Calcutta, amenable only to the jurisdiction of the Supreme Court, or subject only to the Mofussil Courts, with the limited powers which they at present possess, would tend to such a system of fraud and injustice, and leave the natives so entirely at the mercy of the settlers, that I think it would be an insuperable obstacle to the allowing of Europeans to

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settle in the interior. I am therefore satisfied that all persons in the interior of the country must be subject to the Courts of the district which they inhabit; but the more difficult question remains, as to what is to be the nature and constitution of the Court to which they are to be subject, and the laws by which they are to be governed? I cannot help thinking the introduction of colonization will render necessary a total change in the whole judicial system of India, both as regards the King's and Company's Courts, and the laws which are administered in them.

It would be presumptuous in me to offer to the notice of Government any views of my own upon so wide and difficult a subject, and upon which there appears to be such a contrariety of opinion, even amongst those who, from long experience and an intimate knowledge of the interior of the country, and the manners and habits of the natives, seem best fitted to suggest the course which such a new state of things would render necessary. Many are the questions to which the proposed change must necessarily give rise.

Would it be desirable, as the Governor General suggests, " that the Supreme Court, instead of standing, as now, isolated from the Government and from the local tribunals, should be rendered a component part of our judicial establishment, the whole being remodelled into one harmonious system?" If the Provincial Courts are to determine all civil and criminal suits between all the inhabitants of the particular district for which the Court is instituted, it would seem desirable that there should be one Supreme Court (something analogous to the King's Bench in England), superintending and controlling all the tribunals of the country. Sir Charles Metcalfe suggests, that in such a case the Sudder Dewanny and Nizamut Adawlut might be abolished, and His Majesty's Supreme Court, at each Presidency, made the highest Court in civil and criminal jurisdiction for all the territories subject to such Presidency. Other suggestions are made by Sir Charles Metcalfe as to the jurisdiction this Court should possess, the persons from whom the Judges should be selected, and the laws by which the different classes of persons subject to it should be governed. Although I refrain from offering suggestions of my own, I may be permitted to express my general assent to the views of Sir Charles Metcalfe, whose great experience and knowledge of all that relates to the government of India give so much weight and importance to any opinion he may have formed.

Would it be desirable to consolidate the English, Hindoo and Mahomedan laws now in force in India, and form one general code, by which all classes of persons in India should be governed? In the letter of Government it is said that the criminal law, as administered by the Nizamut Adawlut and the subordinate Courts in the interior of the country, retains but little of the Mahomedan code, whether in respect to the laws of evidence or as to the punishment annexed to offences. After the application of Mahomedan law to a Hindoo population, and the changes to which this law has been subjected by the regulations of Government, it can hardly be contended that any jealousy on the part of the natives to our further interference is to be apprehended. There are too many instances in which the customs and prejudices of the Hindoos have been superseded and abrogated by the regulations of Government, to leave any doubt that any alteration in the criminal law would be quietly submitted to. Would it be difficult, therefore, to introduce a code of criminal law applicable to all persons; and might not the same course be adopted as to their civil rights, securing to the natives their own peculiar law and usages?

" The only objection that strikes me (Sir Charles Metcalfe's Minute of the 19th of February 1829) to the spread of a British Christian population in India, is the existing discordance of the laws by which our English and our native subjects are respectively governed; this objection will no doubt in time be removed, and the sooner the better, by forming laws equally binding on both parties in all concerns common to both, and leaving to all their suitable laws in whatever peculiarly concerns themselves alone."

Are British subjects, when amenable to the Provincial Courts, to retain the right of trial by jury in criminal cases?

Mr. Holt Mackenzie states, that it would not be very difficult to constitute a jury of four or five persons in each of the principal towns (Meerut, Delhi, Agra, Furruckabad, Barelly, Allahabad, Benares, Patna, Moorshedabad, Dacca, Chittagong); and Mr. Bayley seems to think, that a jury of Christians of this number might be assembled at those places, though not always Englishmen. It is of course obvious, that if the necessity for juries in the interior arises from the increase

V. Legislative Councils; Courts of Justice; Code of Laws.

of British settlers, that the supply will in a great measure accompany the demand; and, according to Mr. Hogg's statement, there would not now be any difficulty in assembling a full jury of Christians at any of the principal towns mentioned by Mr. Holt Mackenzie. But supposing British subjects to retain their right of trial by jury in all criminal cases, and a code of criminal laws be framed applicable to all classes of persons; is the form of trial of the Hindoo or Mahomedan to differ in this respect from the Christian subjects of the King? I am aware that this is a subject that has of late undergone much discussion, and upon which there is a great contrariety of opinion. The experiment has certainly been successfully tried at Ceylon, as also has the formation of a code of laws; but whether or not the circumstances of the two countries are so totally unlike as to form no ground for its adoption here, I will not take upon myself to say. This question must necessarily press itself upon the attention of those who may have to remodel the Courts of this country upon a free admission of Europeans. On every consideration, it would seem desirable to place *all* classes of His Majesty's subjects in His Indian territories as far as possible under the same laws, amenable to the same tribunals, and to the same forms of trial.

I have alluded only to a few of the questions that must arise, but many hardly less important seem to remain. Is it desirable to introduce the English language into the judicial proceedings of the Provincial Courts, and gradually to abolish the Persian? Ought the principal Judges of those Courts to be selected from regularly educated lawyers? Are European settlers and British subjects to be amenable to Courts of which natives are the Judges? Would it be desirable to employ European settlers, as well as the Company's servants, as Magistrates and Judges; and might it not be a condition of their settlement that they should gratuitously fill those offices, if required by the Government? Is it desirable to diminish the different stages of appeal through which a cause may now be carried? Would it be desirable to have one Supreme Court in India, to which there might be an ultimate appeal, and that the appeal now allowed to the King in Council should no longer exist? Upon all these points and other alterations which would be consequent upon them, various opinions have been expressed, and the best informed and most intelligent writers have been at variance with each other. I advert to them without expressing any opinion of my own, because I am satisfied that they must all be duly considered if there is to be "a change by which the judicature of India, instead of being divided into separate and independent jurisdictions, is to be amalgamated into one."

Of the expediency and necessity of enlarging the legislative powers of Government:

1. Fully admitting the "defectiveness of the existing law, as applicable to the state of things for which it was meant to provide," and conceiving that it may be necessary to deliberate on the means of correcting past omissions, I still think the providing for the exigencies of the future by far the most important consideration.

It can hardly be presumed that the strong representations of this Government will not have their due weight with the authorities at home, and that "the existence of restrictions which impede the prosperity (Sir Charles Metcalfe's Minute of the 19th of February 1829) of our Indian empire," will not be removed if such a change takes place, and it is thought necessary to remodel the whole judicial system of India. By what authority is this principally to be effected? There are but two distinct authorities to whom any alteration or review of the judicial system could be submitted; either the British Parliament, or a local legislative body to whom the Parliament may have delegated its authority.

It would certainly be overlooking all past experience to hope that the many and intricate questions that will arise if the proposed changes are carried into effect, can be provided against by any parliamentary enactments. Parliament would be constantly called upon to remedy defects arising from legislating at such a distance, for a people whose habits and manners are so imperfectly understood, while "the delay which must attend a reference to England for the purpose of removing such doubts, or of reconciling the obligations of the law to the exigencies of the State, might be attended with the most afflicting consequences." The utter impossibility of making laws in England for the millions who inhabit the King's territories in India, must have induced the Parliament to recognize and sanction the vast legislative

lative powers which the Government of this Presidency had assumed without its express authority.

Subject only to the limitations and restriction of the 21st of Geo. III. c. 70, s. 23, and the 37th of Geo. III. c. 112, s. 7, the Company's Government have the power of legislating for all the population of this Presidency, except the inhabitants of Calcutta and the British inhabitants of the provinces. The 13th of Geo. III. c. 63, gave the Government and the Supreme Court a restricted and limited power of legislating for the inhabitants of Calcutta; and as to British inhabitants of the provinces, the legislative powers of Government are restricted to the imposing of taxes with the assent of the Court of Directors and the Board of Commissioners, under the provisions of the 53d of Geo. III. c. 155. The 36th clause of the 13th of Geo. III. c. 63, provides, "that it shall be lawful for the Governor General and Council at Fort William, from time to time to make such *rules, ordinances* and *regulations*, for the good order and civil government of the settlement and other places, &c. subordinate thereto, as shall be deemed just and reasonable, (such rules, &c. *not being repugnant to the laws of the realm*), and set, impose, inflict and levy reasonable *fines* and *forfeitures* for the breach or non-observance of such rules, &c.; but the same, or any of them, shall not be valid unless duly registered and published in the Supreme Court, *with the consent and approbation of the said Court.*" And then it specifies the mode and time of registry, and gives an appeal to the King in Council, making, however, the law valid in the mean time after its registry.

"By the statute 39 & 40 Geo. III. a further power was given to enforce such rules, &c. by corporeal punishment, that is, by public or private whipping or otherwise; and the statute 53 Geo. III. c. 155, s. 66, requires copies of those rules, &c. to be laid before Parliament."

The Judges of the King's Courts in India have varied in their construction of these clauses, and in their notions of the power which they confer on the local Government and the Court. The ingenious arguments of the counsel on the appeal of Mr. Buckingham against the Press Regulation, show the difficulty of giving any precise interpretation to the words, "contrary to the laws of this realm." Upon the best consideration I can give to the words of this statute, I am prepared to adopt the construction which Sir Edward East has given to them: "But looking first to the terms, *rules, ordinances and regulations*, used in the granting part, which rather convey the notion of a power to carry into effect, by local and subordinate means and measures, the substance and spirit of laws already given, than to originate new laws; shackled also, as the power is, by the express prohibition that those local rules, &c. shall not be *contrary to the laws of the realm*; a restriction very difficult to adapt to local circumstances, and almost irreconcileable with any plain departure from the general spirit of those laws, however proper in different circumstances; and most of all looking at the power given to sanction the observance of such local rules, &c. by *fines, forfeitures and corporeal punishments*: the only construction which could safely be put upon this local legislating power was, that it was to be confined to mere *police regulations* for preserving the peace, preventing and punishing nuisances, and the like, and was not to be extended to a general power of making original laws affecting the liberty or title to property of the inhabitants of Calcutta, including all descriptions, or even the laws, usages and customs of the native inhabitants, though a new law should be given by the local Government to affect the inhabitants of the provinces in the same respects."

If this be the right construction, the legislative powers vested in the several Governments as to the inhabitants of Calcutta, Madras and Bombay, appear to fall short in several respects of what the exigency of the case demands. Sir Edward East conceiving this statute had not conferred on the Government and Court any sufficient power, proposed "to extend the power of legislation at present conferred upon the Governor General in Council, with the consent of the Supreme Court, by enabling them to make general local laws, (such as in fact the Governor General and Council alone have been accustomed to make in the Mofussil), not merely confined to purposes of police, but extending to general objects, which would include laws affecting the native inhabitants." If this proposal had been adopted, the defective state of the law as regards the inhabitants of Calcutta might have been remedied; but British inhabitants of the provinces would not have been affected by it. It is with reference to the inhabitants of Calcutta and British subjects in the provinces, that the necessity and expediency of enlarging the legislative powers of Government seems to arise, particularly with reference to

V. Legislative Councils; Courts of Justice; Codes of Law.

those who may be allowed to hold land in the interior, and who, as a necessary consequence of such a measure, would not be removeable at the pleasure of Government. Nor are the difficulties that have arisen as to the laws by which native Christians and foreigners of all descriptions are to be governed to be forgotten. If it had been proposed for the first time to give to the Government in this country the power of making laws for such extensive territories, it might have seemed very doubtful whether such a proposition would have been entertained by the British Parliament; but when it is remembered that an almost unrestricted power of legislation has existed here for many years over the great mass of the people, and that a few thousands out of many millions have alone been exempted from this power, or subjected to it only in a limited sense, it seems not very presumptuous to suppose that there can be no very substantial reason why these heretofore excepted classes of persons should not also be made amenable to the local Legislature of the country. I am disposed, therefore, to think that it is expedient to have in this country an authority legally competent to legislate for all classes and for all places.

2. The constitution of this Legislative Council is a question of some difficulty. It is proposed in the letter of Government, that "the Members of the Supreme Government, and the Judges of the Supreme Court of Calcutta, should be constituted a Legislative Council, with power to enact laws for the guidance of all Courts, whether established by the King or by the local Government, within the territories of the East India Company, and for the regulation of the rights and obligations of all persons subject to their authority." It is also proposed that such laws should be registered in the Supreme Court, with the same right of appeal to the King in Council as now exists against regulations made under the 13th Geo. III. The Judges in Court having administrative functions only; and any argument against such laws to be heard, if at all, before the Supreme Council.

The necessity of the separation of the judicial from the executive and legislative powers in a State is a well-known maxim, and in England is one of the main preservatives of the public liberty. If there existed in this country other elements for a Legislature than the union of the Judges of the King's Court with the Government, I should say, even here it would be most desirable not to depart from a principle of very general application, and founded upon the wisest and most enlarged views of political expediency and the constitution of human society. I admit that it is probable the Judges would be of some assistance to the Government in pointing out the legal effect and bearing of the various laws they might deem it expedient to pass; but it might be a more doubtful question, whether either their knowledge or their previous habits of life would render them equally competent to express their opinions upon the expediency of the measures proposed. The question, too, of expediency must not unfrequently be mixed up with political considerations of great weight and moment; and though it is not proposed that the Judges, and certainly it is most desirable they should not, have any voice or opinion on matters purely political, it will still in many cases be very difficult to separate and distinguish the functions they are to perform.

It is true, that on regulations to be registered under the 13th of Geo. III., the Judges of the Supreme Court are now called upon to decide upon their expediency as well as their legality; such is the construction which the late Sir Edward West, the present Chief Justice of this Court, and other Judges, with whom I entirely concur, have put on this clause; and certainly the task at present imposed upon us is much more difficult, where the regulation is presented for registry without our having any previous knowledge of the reasons and grounds on which the Government have thought fit to propose it, than it could be if we were constitutionally enabled to know their views and objects. "Many laws (says Sir Edward West) are evidently expedient upon the face of them, and from the known principles and propensities of human nature require no specific proof that they are so; others may not appear to be expedient upon the face of them, or from the known principles or propensities of human nature, but may be shown to be so by the evidence of particular facts and circumstances." It is impossible to separate the question of legality from that of expediency, or the Judges might be consulted by a Legislative Council, of which they were not constituent members, as the Judges in England are by the House of Lords, whenever they require their opinion on points of law. I am, however, induced to think that, from the mixed nature of the Government of this country, it is not likely, nor do I think it desirable, that the Company's

Government

Government should alone possess the power of legislating for all classes of the King's subjects in India.

It would seem that as to those places where the King has introduced the English law, and as to that class of persons who are denominated *British* subjects, no power of legislating is intended to be conferred on the Company's Government, except under the control of the Judges, who are appointed by the Crown, are unmixed with the Company's civil servants, and in the selection of whom the Company has no voice. I think it improbable that the Crown, should the Government still remain with the Company, will relinquish this important check; and as there are no other persons in this country who are exclusively the servants of the Crown, I do not see how, in the present state of things, it is possible to form a Legislative Council, with the powers which it is proposed to vest in it, without making the Judges a constituent part.

Under all these difficulties, I am disposed to concur in the sentiments expressed by Government, "that in the present circumstances of this country there are no elements for a Legislature, excepting the Government and His Majesty's Court;" though I by no means think such an arrangement free from many and weighty objections.

3. I must confess I do not feel so much difficulty in considering the restrictions or limitations to which this body should be subject, as I do the persons of whom it should be composed. After the Government has been permitted for so many years to legislate for the mass of the people, reserving to the King in Council the power of disallowing or amending, within a limited time, the laws they frame, and directing them to be formed into a code, and translated into the languages of the country; I cannot see any objection to vesting powers of a similar nature in the new Legislative Council which it is proposed to institute, and which is to frame laws for all classes of His Majesty's subjects. I agree with Sir Edward East in thinking "the necessary exceptions to such an enlarged power would be, that no laws should be made contrary to the duty of allegiance, nor contrary to any express law made or to be made by Parliament, for the Government of British India; and that the laws should be equal in all matters of common concern between native and British subjects, for the common good, without favour or disparagement to either." I conceive the Crown ought to retain the right of disallowing or amending, within a certain time, all laws which may be framed; a power which it now possesses as to regulations made for the Provincial Courts, under the 23d section of the 21 Geo. III. c. 70; and as to regulations registered in the Supreme Court, of *disallowing* only, under the 37th section of the 13 Geo. III. c. 63. The laws, I conceive, should take effect as soon as passed by the local Legislature, subject to being afterwards disallowed or amended. Copies of these laws should be annually laid before both Houses of Parliament; a course which the statute of the 53 Geo. III. c. 155, s. 16, has directed as to all the regulations at present made by the several Governments in India. I should, in addition to this, think it most desirable that all proposed laws should be openly published for a certain fixed time before they could be passed, in order that all persons supposing themselves aggrieved should have an opportunity of stating, at least by petition or memorial, if not by argument, their objections, before the law was carried into effect. It has been the uniform practice of the Supreme Court to hear the inhabitants of Calcutta by means of their advocates, against the registry of regulations made by the Governor General in Council.

By the construction which I am disposed to put on the 36th section of the 13th Geo. III. c. 63, I think the parties affected by any regulation have a right to be heard against its registry; and though I am aware that, upon the strict question of right, some of my learned brethren have formed a different opinion, yet all the Judges appear to be agreed "that it would be a wrong and capricious exercise of power to preclude a previous discussion of a matter which is subjected to appeal." I also think all persons aggrieved by any laws made by the local Legislature should have a right to appeal to the King in Council; a right which exists at present as to regulations affecting the inhabitants of Calcutta, but not as against regulations passed by the Governor General in Council for the provinces.

It is suggested by Mr. Holt Mackenzie that a veto should be allowed to the Governor General in the Legislative Council. The 33d Geo. III. c. 52, s. 51, provides that the Governor General shall not make, repeal or suspend, against the opinion or concurrence of his counsellors, any general rule, order or regulation, for

V. Legislative Councils; Courts of Justice; Code of Laws.

the good order and civil government of the United Company's settlements, or impose of his own authority any tax or duty within the Presidency. The same provisions would of course be extended to the proposed Legislative Council: and if the Governor General was allowed to have a veto against any laws which had been approved of by the majority of such Council, from the necessity there is of vesting in him a discretionary power to act according to his own opinion in cases of high importance and essentially affecting the public welfare, it would seem, on the other hand, expedient that the Judges should, in cases where the proposed enactment was in their unanimous judgment a direct infringement of some well-acknowledged rights of the Crown, or contrary to some express law made by the Parliament for the government of British India, (if not allowed to possess a veto), be at liberty to protest against the act of the majority; the effect of which protest should be the suspension of the law until the King in Council, to whom the matter should instantly be referred, should have decided upon the legality of the proposed measure. Unless some such check as this is vested in the Judges, they would be in the painful situation of being called upon to enforce and carry into effect laws which they were satisfied the Legislative Council had not the power to impose.

I have stated at some length, and I am aware very imperfectly, some of the considerations to which the letter we have had the honour to receive appears to me to lead.

Upon many of the topics upon which I have ventured to touch, I should not have presumed to have offered any opinion of my own, satisfied that it is my duty to assist in administering the laws to the best of my ability, as they are, and not to suggest alterations, had I not conceived the questions proposed by Government necessarily called for such explanations. Whatever may he the course which Parliament in its wisdom may deem proper to adopt, I can only express my cordial desire at all times to assist, as far as I am able, in all measures that may appear calculated to improve and ameliorate the administration of justice in India.

I have, &c.

(signed) *Edward Ryan.*

— No. 23. —

MINUTE by Lord *W. C. Bentinck*, Governor General; dated 10th Oct. 1829.

THE Judges of the Supreme Court agreeing with the Government on most of the essential points, little remains for consideration here but the particular arrangements by which what is proposed may best be carried into effect.

The detailed exposition given by Sir Charles Grey of the circumstances under which the Court has hitherto acted, able and excellent in every respect, is particularly valuable, as exhibiting in the strongest light (if we may at all argue from the past to the future) the utter hopelessness of setting or keeping things right through the operation of Acts of Parliament passed at home; and the principle advocated by him, of maintaining the complete subordination of the local Legislature to the Parliament, will equally, I imagine, be recognized as one of undeniable necessity.

* The measures which he suggests for practically enforcing this principle, appear to be well calculated to secure that and other objects of importance, viz. the early and punctual transmission to England of all laws passed in this country, and the periodical incorporation of them into a digested code.

And the conditions † by which it is proposed to limit the powers of the local Legislature, corresponding in substance with most of those suggested by Sir E. H. East, seem to be unobjectionable. The proviso, which is pecular to the latter, that the law shall be equal to all classes in

* It should be provided (Sir Charles Grey suggests) that every act of an Indian Legislative Council should, within one month, be sent to the Court of Directors and the Board of Commissioners; and that in the next session after the receipt of it in England, it should be laid before Parliament; and that the Court and the Board should have the power of repealing it within one year from the time of its having been made, but with a proviso, that all persons should be saved harmless for any acts done under the regulation before notice of its repeal should have been given in some specified manner; and further, that the Indian Council should once in seven, ten, fourteen or twenty years, form into one body of law, and submit to the Parliament, the whole of the existing regulations, in order that they might be sanctioned or amended.

† These are as follows: The Legislative Council shall not make any ordinance inconsistent with any Act of the Imperial Parliament applying to India: It shall not alter any part of the unwritten law of the British constitution, on which depends the relations of British India or its people with the United Kingdom: It shall not in any way vary the law of treason, or affect any rights of the Crown, or of the Parliament, or those which may be derived by any foreign State from treaties entered into by them with the British Crown.

The exceptions proposed by Sir E. East are, that no laws should be made contrary to the duty of allegiance, nor contrary to any express law made or to be made by Parliament for the government of British India; and that the laws should be equal in all matters of common concern between native and British subjects for the common good, without favour or disparagement to either.

V. Legislative Councils; Courts of Justice; Code of Laws.

in matters of common concern, had better, I should think, be omitted, chiefly because it is one of those generalities of which the particular effects cannot be immediately anticipated, and also because it seems to imply a suspicion of injustice, scarcely consistent with the delegation of powers such as are proposed to be given.

With respect to the constitution of the proposed Legislative Council, there is greater room for doubt. If, as appears to be admitted, every notion of representation must, for the present at least, be relinquished, it may, I think, be questioned whether the choice of legislators should go beyond the Members of the Supreme Council and the Judges of the Supreme Court. I cannot think it would be right to bring into such an assembly the chief minister of the Christian church. There seem to be many reasons to be urged against such an arrangement in India, which it is unnecessary to particularize. The information as to the Hindoo and Mahomedan codes, with a view to which it is proposed to appoint one or more civil servants learned in those laws, may probably be as well obtained, when required, by other means, unless the Supreme Court, as is proposed by Sir Charles Grey, should be composed partly of Judges appointed by the Crown, and partly of judicial servants of the Company; so likewise I should think that, with caution and publicity in the proceedings of the Legislative Council, the interests of the British merchants will be effectually secured; and except we could adopt the principle of representation, which seems out of the question, it would not, I think, add to the weight of the Council, or the confidence of the public, to associate an individual or subordinate functionary with the Members of Government and the Judges of the Supreme Court. It should be remembered that its laws are designed to have effect at all the Presidencies. If any addition were made to the existing established authorities, which I consider for the present to be inexpedient, I should infinitely prefer native gentlemen, whose rank in society and great wealth seem to entitle them to the distinction; while the Council itself would derive from their knowledge of the character, manners and feelings of the natives, that information which the most experienced Europeans so imperfectly possess.

On the whole, therefore, it would, I conceive, be right to constitute the Council as proposed in the letter of the 14th of July.

A veto, it is agreed, shall belong to the Governor General; and the limitation of the power of the Council being rendered specific (the vague words "repugnant to the laws of the realm" must be carefully avoided), it would seem to be unobjectionable and proper to allow the Judges the power of suspending any enactment which might appear to them to be incompatible with the laws they are bound to administer. It is a fundamental principle of the arrangement proposed by Government that the Acts of the Legislative Council shall extend to all places, and to all descriptions of persons.

Provision should of course be made for the due publication of all proposed laws, and parties interested in opposing them should have full opportunity of stating their objections, either by petition or by argument, authority being also reserved to the Governor General in Council of appointing committees or commissioners specially to inquire into and report upon all matters necessary to a just determination on the expediency of any law.

The promulgation of laws subsequent to their enactment must also of course be fully provided for.

As to the formation of a general code for British India, with such special provisions as local peculiarities render unavoidable, and the gradual adoption of one consistent system for the administration of justice in all parts of the country, the remarks of Sir Charles Grey appear to be generally just, though he perhaps overrates the advantages to be derived from the services of English lawyers, unless where those of superior men can be secured. But these are objects to be attained only in course of time, through the operation of laws to be adopted, after careful consideration of each, by the proposed Legislative Council.

Even the general principles, how far the rules of English laws and process shall be maintained, or a simpler system adopted, stript of its technicalities, shall be substituted; to what extent the English language shall be allowed or enjoined; whether Englishmen shall be permitted to claim any and what special distinctions as to the form of trial, or the tribunal to which they are to be subject, and especially in what cases and within what tracts trial by jury shall be introduced; would require separate and deliberate consideration: and the peculiarities of every province; the expediency of having local rules, distinct from, though of course subordinate to, all general laws; the means of recording and maintaining

V. Legislative Councils; Courts of Justice; Code of Laws.

local usages, where proper to be maintained; these and various other points must be discussed before we can attempt to lay down a general scheme for the better administration of justice throughout the wide regions that will be subject to the proposed Legislative Council.

The necessity of a Legislative Council having been thus established, it would seem right that we should request the aid of the Judges in preparing a scheme for the execution of the measure, to be submitted for the approval of the home authorities.

In the event of the proposition for a Legislative Council not receiving the sanction of Government or of Parliament, it would be desirable that we should now provide for that contingency, by requesting the Judges to suggest, for our concurrence, such alterations in the present Acts as may correct the inconsistencies, and may remedy the inconveniences, which have been so fully detailed in the various communications upon the present subject. It would seem impossible for the home authorities, as experience has hitherto abundantly proved, to furnish the details which a plan of so extensive a nature must require.

(signed) *W. C. Bentinck.*

— No. 24. —

LETTER from the Governor General in Council to the Hon. Sir *Charles E. Grey*, Knight, the Hon. Sir *John Franks*, Knight, and the Hon. Sir *Edward Ryan*, Knight, Judges of the Supreme Court of Judicature at *Fort William.*

HONOURABLE SIRS, Fort William, 20 October 1829.

WE have the honour to acknowledge the receipt of your letter of the 2d instant, and of the several papers which accompanied it; and entertaining the strongest sense of obligation to you for the manner in which you have met the wishes expressed in our letter of the 14th of July, we venture confidently to solicit your further aid in the prosecution of those measures which, after an attentive consideration of the important facts, observations and suggestions contained in the documents now acknowledged, it appears to us expedient and necessary to adopt.

To the able exposition which you have made of the circumstances that affect the constitution, and of the principles that have regulated the proceedings, of His Majesty's Courts, we shall not venture further to advert than by remarking how strongly the detail given, of the difficulties and embarrassments incidental to the discharge of their functions, appears to confirm the persuasion, under which we recently addressed you, of the necessity of constituting a local Legislature with enlarged powers. On that fundamental point, it is highly satisfactory to us to find that there exists a complete concurrence of opinion. It remains only therefore to consider the particular arrangements by which what is proposed can best be carried into effect. First, as to the constitution of the Legislative Council: It appears to be generally agreed, that all notion of representation must, for the present at least, be relinquished; and the case being so, it seems to us, after the fullest consideration of the subject, that the Council should consist of the Members of the Supreme Government, and the Judges of the Supreme Court of this Presidency. If, as has been suggested by the Chief Justice, the judicial servants of the Company shall be hereafter admitted to that Court, we should not of course propose to exclude the officers so distinguished from a share in the Legislature. But as things are now constituted, it would not, we are of opinion, add to the weight of the Legislative Council, or to the confidence of the public in its wisdom and justice, to associate any subordinate functionary with the Members of Government and His Majesty's Judges; more especially when we advert to the other Presidencies, to which also the powers of the Council must, we are of opinion, be made to extend. Similar considerations occur to us as opposed to the appointment of any individual, so long as the principle of representation shall be inapplicable to the circumstances of the country. We readily indeed admit that an accession of much valuable information might be obtained by constituting the Legislative Council on a wider basis; but the advantage of having within itself such an extent and variety of information, as may obviate the necessity of frequent inquiry, appears to be unattainable. On questions touching the laws and usages of our native subjects, the Council must, we think, depend chiefly on the result of inquiries more extensive and minute than any one

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or two individuals could be expected to satisfy. It will always of course be able to command the services of any public functionary, from whom it may require an exposition of any matters with which he may be especially conversant: and with the caution and publicity of proceeding, on which you have justly laid stress, we trust that, excepting from causes inseparably connected with our position in the country, there will be little danger of its remaining in ignorance of any particulars, the knowledge of which may be necessary to secure an equal attention to the interests and just claims of every class of our subjects. Several reasons occur to us against the measure of bringing into such an assembly the chief minister of the Christian church, on which we shall not now enlarge. But though it is in our judgment expedient that, for the present at least, the Legislative Council should be constituted as proposed in our letter of the 14th of July, we would not be understood as objecting to the enactment of a provision which shall leave to His Majesty a greater latitude of selection, if Parliament shall in its wisdom see fit to provide for a change of circumstances.

We have great satisfaction in stating our general concurrence in the principles according to which it is proposed in Sir Charles Grey's Minute to limit the powers of the Legislative Council, to maintain its complete subordination to Parliament, to secure a due publicity in its proceedings, to ensure a hearing to all parties interested in opposing any proposed enactment, to enforce the fullest possible promulgation of all laws passed by it, and to provide for their periodical consolidation.

We likewise fully concur with you in thinking that, besides reserving a veto to the Governor General (the restriction contained in the 33 Geo. III. c. 52, s. 51, should also of course be maintained), it will be entirely proper that the Judges of the Supreme Court, or a majority of them, should have the power of suspending the enforcement of any Act of the Legislative Council which they may consider to be illegal.

Having thus explained to you the views which we entertain in regard to the constitution of the proposed Legislative Council, little differing, we are happy to observe, from those which you suggest, we trust we may be permitted to request that you will have the goodness to prepare the draft of a bill for the execution of the measure, to be submitted for the approval of the home authorities.

Strongly as we are impressed with the indispensable necessity of constituting a local Legislature, as proposed, we consider it proper to provide for the contingency of the proposition not receiving the sanction of Government or of Parliament; and we shall consequently be greatly obliged by your suggesting, for our concurrence, such alterations in and additions to the present Acts applicable to India, as it may appear to you expedient to make, with the view of correcting the inconsistencies and remedying the inconveniences which have been so fully detailed in the papers now under consideration, as far as that object can be attained through the direct intervention of Parliament.

It will likewise be highly satisfactory to us to receive from you a full communication of your views and sentiments, in regard to the measures by which the administration of justice to all classes of persons throughout the British territories may be gradually provided for, on a regular and consistent system, with such special provisions only as local peculiarities may render unavoidable.

But it is not, of course, our intention that the preparation and transmission of the draft above mentioned should be delayed until the details which each of the latter propositions must involve can be furnished.

We beg to add, that we shall instruct the Secretaries to Government to afford immediate attention to any request for information which the Judges may be desirous of obtaining from the records of Government.

We have, &c.

(signed) *W. C. Bentinck.*
C. T. Metcalfe.

(True copies.)

(signed) *Holt Mackenzie,*
Secretary to Government.

V.
Legislative Councils; Courts of Justice; Code of Laws.

— No. 25. —

(No. 4 of 1830.)

(Territorial Department.)

LETTER from the Governor General in Council to the Court of Directors, &c. &c. &c.

HONOURABLE SIRS, Fort William, 14th October 1830.

YOUR Honourable Court is aware, from the documents which accompanied our Secretary's letter under date the 20th of October last, that we have for some time been in communication with the Judges of the Supreme Court, on the subject of the measures to be taken for the amendment of the laws applicable to the different classes of persons resident within the British territories, and for the establishment of such a judiciary system as might ensure their prompt and just administration; with reference especially to the circumstances incident to the more extended settlement of British-born subjects, with permission to hold land. We have now the honour of transmitting to you, as numbers in the packet, copies of the papers noted in the margin, in continuation of those which were forwarded to you on the above date.

Letter from the Judges of the Supreme Court, dated the 13th September 1830, with 4 Enclosures.
Ditto to Ditto, dated 28th September 1830, with its Enclosure.
Ditto to Ditto, dated 9th October 1830.
Ditto from Ditto, dated 7th October 1830.
Ditto to Ditto, dated 11th Oct. 1830, with its Enclosure.
Ditto from Ditto, dated 13th October 1830, with its Enclosure.

2. We beg permission to call your early and particular attention to the draft of a bill (as finally amended), and the papers immediately relating to it (Nos. 2, 3 and 4), and to submit our recommendation that the necessary measures may be taken to obtain the enactment, by the British Legislature, of a law corresponding with that draft, with any modifications or additions that may appear to be necessary or expedient. The grounds on which we consider such a law to be urgently and indispensably required, and the considerations which have influenced us in the adoption of its several clauses, are so fully explained in our correspondence with the Supreme Court, that it must be superfluous to enlarge upon the subject in this place. It may be sufficient to state that, in our judgment, the members of the Legislative Council should not, in the first instance at least, be numerous. It may eventually be proper to enlarge it; and the number to be inserted in the bill, which in the draft is left blank, your Honourable Court will best be able to determine. Besides the Members of the Supreme Council, and the Judges of the Supreme Court, we are not prepared to hazard an opinion as to what individuals should be admitted into the Legislative Council, or from what classes and on what principles, the selections should be made. These indeed are points which, we think, should be left exclusively to the decision of the home authorities.

3. We shall only add, that we hardly consider necessary the precautionary measure adverted to in the concluding paragraph of the Judges' letter, dated the 13th instant.

4. A copy of any reply which we may receive to the letter we addressed to the Judges on the 11th instant, on the subject of the Enclosures 2, 3 and 4, of their letter dated the 13th ultimo, will be forwarded to your Honourable Court with all practicable dispatch.

We have the honour to be, &c. &c.

(signed) *W. Bentinck.*
W. B. Bayley.
C. T. Metcalfe.

(Fort William.—Revenue Department.)

ABSTRACT of Revenue Letter, No. 4, of 1830, addressed to the Honourable Court of Directors, dated the 14th October 1830.

Forwarding with reference to Papers transmitted on the 20th October 1829, copy of Correspondence with the Judges of the Supreme Court of Judicature of Fort William, in Bengal, relative to the institution of Legislative Councils, the establishment of a judiciary system, and the formation of a code of laws for the British territories in the East Indies.

(signed) *Holt Mackenzie*,
Secy to the Govt.

—No. 26.—

LETTER from the Judges of the Supreme Court to the Governor General in Council; submitting Papers relative to the institution of Legislative Councils, the formation of a Code, and the establishment of a System of Courts.

Calcutta, 13th September 1830.

RIGHT HONOURABLE LORDS AND HONOURABLE SIRS,

WE have given from the first all the attention in our power to the subjects mentioned in the letter which you addressed to us on the 20th of October last, and having had the benefit of conferring personally with you upon some occasions, we now submit to your consideration the accompanying papers, viz. No. 1. intituled "Heads of a Bill, to be intituled an Act for establishing Legislative Councils in the East Indies." This you are aware is not a paper of our own, but one which, with the assent of us all, though not with an absolute unanimity as to minor points, was arranged at the conferences to which you did us the honour of admitting us. No. 2, intituled, "Some observations on the suggestion of the Governor General in Council, as to the formation of a code of laws for the British territories in the East Indies." No. 3, "Outline of a system of Courts for the British territories in the East Indies."

You have signified your wish that specific provisions for the last object should be annexed to those which relate to the establishment of Legislative Councils, and which have been reduced into the form of a bill; but perhaps the papers Nos. 2 and 3 will indicate sufficiently both the outline of the arrangements which would occur to us, if any extensive alteration in the system of Courts should be made, and the difficulties which prevent us at present from reducing our notions upon the subject into the form of a bill. Without knowing better than we do the views of His Majesty's Ministers, and of the Court of Director, we can form but very uncertain conjectures of what is practicable, or at least of what would be adapted to the ground-work on which it may be intended to re-establish the Government of India.

As long as the East India Company may continue not only to have that right of perpetuity which is annexed to its character of a trading corporation, but actually to carry on trade, it will probably be thought that there must be some Courts in India not only of appellate, but of original jurisdiction, of which the Judges shall be appointed immediately by the Crown, if for no other reason, yet for this at least, that the Company may sue and be sued in their commercial capacity, before some tribunals not constituted by themselves, nor consisting merely of their own civil servants, whom the most perfect integrity never can exempt from the impression, that they are too dependent on the Company to act as Judges in questions between them and other British persons; but if the Company should ever cease to trade, or even if that separation of their proceedings in their commercial from those in their political capacity, which, to a certain extent, was provided for by the 53 Geo. III. c. 155, should now be carried further and completed; one objection, at least, against all the Courts of original jurisdiction being put upon the footing of Company's Courts, might be removed.

A general admission of British persons into the provinces, or any parts of them, with the right of holding lands in fee, would present a state of circumstances requiring in the arrangements of Courts of Justice some different provisions from

V. Legislative Councils; Courts of Justice; Code of Laws.

h ose which would be suitable to a system founded upon a prohibition of the intercourse of British persons with the interior of the country. These and several other undecided and doubtful points, of the gravest importance as matters of state policy, and to which, as to the foundation on which it would rest any bill for the general administration of justice must be accommodated, prevent us from offering anything more than mere suggestions as to the formation of any code of law and system of Courts. We are prepared, however, to say, that there is no arrangement which we are able to anticipate, in which it does not seem to us that it would be desirable there should be a Legislative Council for India, or one for each Presidency, subordinate to the Imperial Parliament; and in like manner one Court for India, or one for each Presidency, of intermediate appeal between the superior Courts of this country and His Majesty in Council, or the House of Lords; and that of these Legislative Councils and Courts of Appeal, a majority of the Members and Judges should be appointed immediately by the Crown, we should say indeed that the whole ought to be so appointed, but that a portion of them should be selected by the Ministers of the Crown from amongst the Company's servants; and it might perhaps be thought more regular to establish any such Courts of Appeal by Letters Patent of the Crown, issued under the authority of an Act of Parliament, rather than by Act of Parliament alone. Whether such Legislative Councils and Supreme Courts of Appeal could at present, and all at once, be brought into active and effectual operation for all India, is perhaps more than doubtful, and our own inclination of opinion would be to attempt to give them effect within some one limited district, with a liberty at the same time to the Governor General in Council to make use of them for the rest of the territories in cases in which they could be employed for that purpose with advantage. Our views of this matter are stated in the draft of a letter which we are about to send in reply to one received by us from the Secretary of the Board of Commissioners for the Affairs of India. Of this draft, we take the liberty of enclosing a copy, marked No. 4, and if any objection should be felt by the Governor General in Council against any statements in it, we would willingly reconsider them, and make any corrections which may be desirable, with the least possible delay.

It has been with unfeigned reluctance indeed, and some apprehension of giving offence, that we have spoken as plainly as we have done upon several points both in that letter and in the other papers which are now submitted to you; but upon a subject respecting which, from its extent and intricacy, all opinions are so liable to be misunderstood, those which are stated otherwise than plainly and fully may serve for much mischief, but can scarcely do any good. We beg leave to assure you, in all sincerity, of our desire to render any assistance of which we may be thought capable, upon this occasion of the re-establishment by Parliament of the Government of the British territories in India. In so vast an affair it is impossibl that any persons can act together unless there be a willingness on all sides to make some sacrifices of opinion; and of the greater part of what we have taken the liberty to suggest, we hope it will be understood that it is intended as nothing more than suggestion, and that it is susceptible of various modifications. The only principles which we are desirous should be considered as fixed, are such as we are confident all of us are fully agreed upon, namely, that all the Indian territories which constitute the three Presidencies are dominions of the Crown of the United Kingdon, though with all such conditions annexed as have been stipulated in any treaties or agreements made at the time of the acquisition of the territories; that Parliament has an unquestionable right of legislating for the whole of the Indian dominions of the Crown, notwithstanding that certain powers of legislation have been and may hereafter be committed to others by Act of Parliament, or permitted to subsist in the hands of others as a remnant of the former institutions of the country; and that although justice must in general be administered in India by Indian Courts, yet wherever circumstances will admit of a sufficiently regular frame of Government being established, the appeal or the last resort ought to be some Court or Courts of the United Kingdom, or some Courts in India, of which the Judges should be appointed immediately by the Crown.

We have the honour to be, &c.

(signed) *Chas Edwd Grey.*
Edward Ryan.

(True Copy.)

(signed) *Holt Mackenzie,*
Secy to the Government.

(Enclosure, No. 1.)

HEADS of a BILL to be intituled "An Act for establishing Legislative Councils in the *East Indies*."

1. WHEREAS the Civil and Military Government of the Presidencies of Fort William, Fort St. George and Bombay, in the East Indies, subject to such superintendence, direction, control and restrictions as for that purpose have been provided and established, is entrusted to the Governor General in Council and the Governors in Council of the said Presidencies, and also the ordering, management and government of all the territorial acquisitions and revenues therein: And whereas the said Governor General in Council and Governors in Council have been authorized and empowered by several Acts of Parliament to make rules, ordinances, regulations and laws, as well for the imposition of duties and taxes as for divers other purposes; and it hath been enacted, that all regulations affecting the rights, persons or property of the natives, or of any other individuals who may be amenable to the Provincial Courts of Justice, shall be registered in the Judicial Department, and formed into a regular code; and it hath also been provided, that the rules, ordinances and regulations made for the settlements at Fort William, Fort St. George and Bombay, and the factories and places subordinate thereto, shall beregistered in the Supreme Courts of Judicature at the said settlement, with the consent and approbation of the said Courts; and further provisions have been made for the better enabling of His Majesty in Council in some cases to disallow or repeal, and in others to amend, such rules, ordinances or laws: And whereas it is necessary that a power should at all times be vested in some persons resident within the British territories in the East Indies of making regulations and laws for all the territories and people there under British Government: And whereas the several Acts of Parliament which have heretofore been passed for that purpose have been found to be in some respects imperfect and inconvenient, and it is expedient that more full, certain and effectual provisions should be established instead of them; Be it therefore enacted, that so much of an Act, intituled, &c.

13 Geo. III. c. 63, s. 30, 37.
21 Geo. III. c. 70, s. 23.
37 Geo. III. c. 142, s. 8.
39 & 40 Geo. III. c. 79, ss. 11. 18, 19, 20.
47 Geo. III. sess. 2, c. 68, ss. 1, 2, 3.
53 Geo. III. c. 155, ss. 98, 99, 100.

and so much of every other Act heretofore passed as in any way relates to the making of any laws or regulations by the Governor General in Council, or the Governors in Council of any of the said Presidencies, be, and the same are hereby repealed: Provided always, and be it further enacted, that nothing herein contained shall be construed so as to repeal any regulations heretofore made by any Governor General in Council or Governor in Council; but all such regulations, until they be expressly repealed or altered by some competent authority, shall have the same force and effect as they would have had if this Act had not been passed.

2. And be it further enacted, That there shall be one Legislative Council within each of the said Presidencies of Fort William, Fort St. George, and Bombay.

3. Each of the said Legislative Councils shall consist respectively of the Governor General, or Governor of the Presidency for the time being, and of all other the Members of the Council of the Presidency, and of the Judges of the Supreme Court of Judicature of the Presidency, and of such other persons, not exceeding —— in numbers, as from time to time shall be appointed by His Majesty, his Heirs or Successors, or by the Directors of the East India Company, by and with the approbation of His Majesty, his Heirs or Successors.

4. Each of the said Legislative Councils, or so many of the members thereof as shall be able to attend, shall meet and assemble from time to time at some convenient place, to be appointed by the Governor General, Governor or Vice President, within the towns of Calcutta, Madras and Bombay respectively, or in the neighbourhood, and within some convenient distance of the same, at such times and in such manner as such Governor General, Governor or Vice President, shall also direct; and it shall not be lawful for any of the said Legislative Councils to assemble in the capacity of a Legislative Council otherwise than is herein provided.

 5. Each

V. Legislative Councils; Courts of Justice; Code of Laws.

5. Each of the said Legislative Councils shall be capable of deliberating, resolving and acting in its capacity of a Legislative Council whenever three members thereof shall be lawfully assembled, provided that one of the three be either the Governor General, Governor, Vice President, or some other Member of the Council of the Presidency, and another be one of the Judges of the Supreme Court, but not otherwise, unless there should be no Judge then resident, or unless upon any urgent occasion there should be any refusal or wilful neglect of the Judges then resident at the place at which, or in the neighbourhood of which, any of the said Councils shall be held; in either of which cases, and after a Minute to that effect shall have been entered upon the proceedings of any such Legislative Council, and signed by the Governor General, Governor or Vice President for the time being, it shall be lawful for any three members of any such Council who may be assembled upon any such occasion to deliberate, resolve and act in all respects as a Legislative Council, in the same way as if one of the Judges had been present: And be it further enacted, that all the proceedings at any meeting of any such Legislative Council shall be conducted as nearly as possible in the same manner and form as the proceedings before the Governor General in Council are by statute directed to be conducted, except that no Governor General or Governor shall have any power of making any law or regulation, nor of deciding any question whatsoever which may arise in any such Legislative Council of his own sole authority: Provided always, and be it further enacted, that no law or regulation of any of the said three Legislative Councils shall be deemed or taken to have been finally resolved upon and established, nor shall have any force or effect whatsoever until the consent in writing of the Governor General of Fort William in Bengal, shall have been first obtained and annexed thereto; and that no law or regulation of either of the Legislative Councils at Madras and Bombay shall have any force or effect until it shall have been confirmed by the Legislative Council of the Presidency of Fort William in Bengal, for which purpose, as soon as it shall have been fully resolved upon, it shall be sent to the Legislative Council of the Presidency of Fort William in Bengal; and it is hereby further enacted, that the Legislative Council of the said Presidency of Fort William shall have full power and authority to make regulations and laws, as well for the other Presidencies of Fort St. George and Bombay and for all the territories and territorial acquisitions in the East Indies in the possession and under the government of the East India Company, in the same manner as for the Presidency of Fort William itself, whensoever to the said Legislative Council of the Presidency of Fort William it shall appear that there is occasion so to do; and shall also have the power of repealing or altering any regulations or laws heretofore made by any Governor in Council, or hereafter to be made by any Legislative Council of either of the said Presidencies of Fort St. George or Bombay.

6. Every law or regulation, after it shall have been resolved upon by any of the said Legislative Councils, and before it shall be submitted to the Governor General of Fort William for the purpose of having his consent in writing annexed thereto, and before it shall be sent by the Legislative Council of Fort St. George or Bombay to the Legislative Council of Fort William, shall be sent round to every resident Member of the Legislative Council by which such law or regulation shall have been made; and each resident Member, whether he shall or shall not have attended the meetings of the Council at which such law or regulation shall have been deliberated or resolved upon, shall signify in writing his assent or disapprobation thereof; and if any two of the Judges of either of the Supreme Courts, or in case there be only two or one of the Judges resident at the time, then if the only Judge or the Chief Justice, or in his absence the Senior Judge of the Supreme Court of the Presidency at which the law or regulation shall have been passed, shall state his or their disapprobation thereof by reason of his or their opinion and belief that such law or regulation is not within the powers vested by this or any subsequent Act in the Legislative Council by which the law or regulation shall have been made, and shall also state his or their grounds or reasons for such opinion and belief, then the law or regulation respecting which such opinion and belief shall be so stated as aforesaid shall be suspended, and shall have no force nor effect until such time as it shall have been referred to the President of the Board of Commissioners for the Affairs of India for the time being, and to the Directors of the East India Company, and until the orders of such President respecting the same shall have been received in India; and the said President for the time being is hereby authorized

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in all such cases to submit any such law or regulation to His Majesty in Council, and after having so submitted the same, to issue his orders to the Governor General of Fort William for the revocation or suppression, or the publication and enforcement of the law or regulation; and if any such law or regulation shall be so directed to be published and enforced, it shall after such publication have the same force, authority and effect, and no other, as if no such suspension as hath hereinbefore been mentioned had taken place.

7. The powers of each of the said Legislative Councils, to be exercised in manner and form as aforesaid, shall extend to the making of laws and regulations for the repealing, amending or altering of any regulations heretofore made by any Governor General in Council, or Governors in Council, or hereafter to be made by any of the said Legislative Councils, and to the making of laws and regulations for all other purposes whatsoever, and for all manner of persons, whether British or native, or foreigners or others, and for all places and things whatsoever, within and throughout the whole and every part of the British territories in the East Indies, in the possession and under the government of the East India Company, except as hereinafter is excepted, and subject to the conditions and restrictions hereinafter expressed, and at all times and in every respect subject to the full, absolute and supreme legislative power and control of the Imperial Parliament of the United Kingdom of Great Britain and Ireland: Provided always, that no law or regulation, made by either of the said Legislative Councils for the Presidencies of Madras or Bombay, shall at any time have any force, authority or effect, except within the limits of the territories constituting the Presidency, by the Council of which it shall have been made.

8. No law made by any of the said Councils shall in any way repeal, vary, suspend or affect any Act of the Imperial Parliament, nor any Letters Patent of the Crown, nor in any way affect any prerogative or right of the Crown or Parliament, nor the constitution or rights of the East India Company, nor any part of the unwritten law or constitution of the realm of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any persons to the Crown, or the sovereignty or dominion of any part of the British territories in the East Indies.

9. As soon as any law or regulation shall have been resolved upon, and passed at any lawful meeting of any of the said Legislative Councils, it shall forthwith be published in the Government Gazette, or some other newspaper of the place, before it shall be sent round to the resident Members of the Legislative Council and to the Governor General of Fort William, for the expression of their approbation or dissent, in writing, and an interval of 14 days at the least shall take place, from the time of the first publication, before the Governor General shall give such consent; and if any person or persons interested in or affected by any such law or regulation, shall petition any such Council to take into consideration his or their objections against it, at any time before the consent in writing of the Governor General of Fort William for the establishment of such law or regulation shall have been given to the Governor General, or Governor or Vice President of the Presidency, at which the law or regulation shall have been made, shall direct at what time and place any such person or persons shall state his or their objections, and whether by written petition only, by counsel, or in person; and it shall be lawful for any person or persons who may be aggrieved by any such law or regulation, to appeal against the same to His Majesty the King in Council, who shall have full power and authority at any time to repeal the same, but such appeal or notice thereof shall be made or given within six calendar months of the publication in India of the law or regulation which shall be the subject of appeal.

10. As soon as one week shall have elapsed after any law or regulation shall have been established by any resolution of any of the said Legislative Councils, and by such written consent of the Governor General, as hereinbefore has been made necessary, the same, if no sufficient cause shall have been given for the suspension thereof in manner aforesaid, shall be carefully registered, and preserved as a record by such Legislative Council, and shall be printed and published in the English language; and for the better securing of a general and accurate publication thereof, one printing-office or press, for each Presidency, and no more, shall from time to time be licensed by the Governor General in Council, or Governor or Vice President in Council, of the Presidency, to print and publish the laws of each Legislative

V. Legislative Councils; Courts of Justice; Code of Laws.

Council, and the granting or changing of such licenses shall from time to time be notified by proclamation or public advertisement, and each of the said Legislative Councils shall, from time to time, make such standing orders as may be most convenient and effective for the due publication of such laws, in as many of the languages of India, and in such manner, as may most effectually secure a speedy, full and complete promulgation thereof throughout the British territories in the East Indies, so that the knowledge thereof may be communicated to all who may be liable to be in any way affected thereby.

11. If any person or persons shall wilfully publish any false statement of any law of any of the said Legislative Councils, he or they shall be deemed guilty of a misdemeanor, and shall he punished accordingly; and if any person shall suffer damage or loss in consequence of being misled by any such false statement, it shall be a good cause for his recovering damages in a civil action, to be instituted against the party or parties by whose false statement he shall have been so misled.

12. Within one month after the passing and registering of any law or regulation by any of the said Legislative Councils, the Governor General in Council, or Governors or Vice President in Council, shall send duplicate copies of the same to the Court of Directors of the East India Company, and to the President or Secretary of the Board of Commissioners for the Affairs of India; and at any time within one year from the first receipt of any such law or regulation, it shall be lawful for the President of the said Board of Commissioners, after having submitted the same to His Majesty in Council, to transmit to the Legislative Council of the Presidency of Fort William an order for the repeal of the same, and the same shall be forthwith repealed: Provided always, that all acts done under and according to any such law previous to such repeal thereof, and during its continuance, shall be good and valid; and all persons shall be saved harmless for any thing by them done, or omitted to be done, in obedience to or compliance with any such law, before the time at which they shall have had, or with due care and watchfulness might have had, notice of the repeal thereof.

13. Nothing herein contained shall extend or be construed to extend to the affecting in any way of the right or power of the Imperial Parliament to make laws for the British territories in the East Indies, and for all the inhabitants thereof; and it is expressly declared, that a full, complete and constantly existing right and power is intended to be reserved, and is hereby reserved to the Imperial Parliament of the United Kingdom of Great Britain and Ireland, to control, supersede or prevent, by Act of Parliament, all proceedings and acts whatsoever of the said Legislative Councils, and to repeal and annul at any time any act, law or regulation whatsoever, by the said Councils at any time made or done, and in all respects to legislate for the British territories in the East Indies, and the inhabitants thereof, in as full and ample a manner as if this Act had not been passed; and the better to enable the Imperial Parliament to exercise at all times such authority, power and right, the President of the Board of Commissioners for the Affairs of India shall, once in every Session of Parliament, lay before both Houses of Parliament the Laws and Regulations of the said Legislative Councils, which, since the foregoing Session, may have been transmitted to him or to the Secretary of the said Board as hereinbefore is provided; and once in every period of ——— years the said Legislative Councils shall transmit to the President of the Board of Commissioners, and the said President shall lay before both Houses of Parliament, the whole of the subsisting laws heretofore made by the said Councils, and then remaining unrepealed and in force; and the said Councils, before such transmission of the same, shall cause the same to be methodically and systematically arranged, and shall annex thereto such tables, indexes, glossaries, and other explanatory documents and materials as may be conducive to the true understanding of the same.

14. All laws and regulations which shall be made and published by the said Legislative Councils in the manner and form hereinafter provided, as long as they shall remain unrepealed and unaltered, shall be of the same force and effect within and throughout the British territories in the East Indies, and every part thereof, as any Act of the Imperial Parliament is, would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever within the same territories, and in every part thereof, in the same manner as any public Act

of

of Parliament would and ought to be taken notice of, without being specially pleaded or put in evidence.

(signed) *Chas. Edw. Grey.*
Edward Ryan.

(A true copy.)

(signed) *Holt Mackenzie,*
Secy to the Govt.

(Enclosure, No. 2.)

Some OBSERVATIONS on a Suggestion by the Governor General in Council, as to the formation of a Code of Laws for the *British* Territories in the *East Indies.*

IT may be said, with sufficient precision for the present purpose, that the whole body of Municipal Law, in any country, may be comprehended within the divisions into which Sir William Blackstone has separated the English Law: First, the rights of persons, or the distribution of political power, privileges, rights and duties. Secondly, the rights of things, or the law of property in things immoveable and in things moveable, together with the law of contracts. Thirdly, private wrongs, or the definition of injuries done by persons to each other, for which the law provides remedies and the means of compensation, together with the courses prescribed for the attainment of such remedies. Fourthly, public wrongs, or the definition of those injuries which are not susceptible of compensation, and are supposed to have a direct effect upon the interests of the whole body of the people, together with the courses established for attaching such consequences to injuries of this sort as may deter others from being guilty of them. As to the first of these divisions of law, namely, the rights of persons, it has always hitherto been, and is likely to remain in India, in so deplorable and discreditable a state of confusion, that it is scarcely possible to speak of it with the plainness which is requisite for showing the real state of the case, and yet with the respect which is due to it as the existing law. The most opposite notions are allowed to prevail upon points respecting which it is of the utmost importance that no doubt which can be removed should continue to subsist. There is no uniform, no definite opinion, either as to the true character and incidents of the Sovereignty of the Crown, nor of the dependence of the laws on Parliament, nor as to the rights either of political power or of property of the East India Company, nor even of the relation in which the many millions of natives stand to the political authorities by which they are entirely governed. Different races of natives have different grounds of political right; as to one class of them, it is even disputed under which of two different systems of law it is that they live. Amongst the Hindoos and Mahomedans there are persons, not even claiming any sovereignty, to whom the Governments have nevertheless stipulated an exemption from law, or at least from all Courts of Justice. Amongst the British authorities we have Courts, which the Legislature has made Supreme, yet to which no other Courts are allowed to be subordinate; Commissions of the Peace, which are sealed by the Supreme Courts, but are directed almost exclusively to persons who are judicial or magisterial officers of the Company, and who have been recently declared by the Privy Council to be exempt in that character from the control by mandatory writs of the Courts out of which their commissions as Justices issue; so that from the difficulty of distinguishing what is done by them in one character from what is done in the other, the consequence must be, that in both they will no longer be responsible to any but the Governor General in Council. There are Acts of Parliament commanding the Supreme Courts to take evidence for the House of Lords, and for special tribunals in England, constituted *inter alia*, for the prosecution of offences by the officers of the Indian Governments; and there are Letters Patent on the other hand, forbidding the Supreme Courts to call for the evidence of natives, except according to the practice of the Company's Courts, or in other words, except as the Indian Governments and their officers will permit. The rights and powers of all the Court's officers, and other persons, which depend on Regulations of the Governments, are subject at all times to change; and there is no adequate provision for keeping them in harmony with Acts of Parliament and Letters Patent of the Crown which apply to

V. Legislative Councils; Courts of Justice; Code of Laws.

India. In this state of circumstances, no one can pronounce an opinion, or form a judgment, however sound, upon any disputed right of persons, respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public, or persons in office at home, not even the law officers, can be expected to have so comprehensive and clear a view of the present Indian system, as to know readily and familiarly the bearings of each part of it on the rest. The title that is sound in it is obscured by ill-defined pretensions on all sides, and by shreds and patches of law of every texture and hue; some, the remnants of what has long been worn out, and others, the samples of what, at different times, it has been the design of one party or another to manufacture. There are English Acts of Parliament specially provided for India, and others of which it is doubtful whether they apply to India wholly, or in part, or not all. There is the English common law and constitution, of which the application, in many respects, is still more obscure and perplexed. Mahomedan law, and usage; Hindoo law, usage and Scripture; Charters and Letters Patent of the Crown; Regulations of the Governments; some made declaredly under Acts of Parliament particularly authorizing them, and others, which are founded, as some say, on the general powers of Government entrusted to the Company by Parliament, and, as others assert, on their rights as successors of the old Native Governments; some Regulations require registry in a Supreme Court, others do not; some have effect generally throughout India, others are peculiar to one Presidency or one town. There are commissions of the Governments, and circular orders from the Nizamut Adawlut, and from the Dewanny Adawlut; treaties of the Crown; treaties of the India Governments; besides inferences drawn at pleasure from the application of the *droit public* and law of nations of Europe, to a state of circumstances which will justify almost any construction of it, or qualification of its force. Such a state of things, though it may not be justly liable to blame, (inasmuch as it may have been unavoidable) and though a great part of it may be better than anything which could be readily substituted, can scarcely subsist as a whole without disturbing the course of good government even within the United Kingdom; and it would, no doubt, be very desirable that so confused a tissue should be disentangled, and that as much as possible of it should be arranged and permanently fixed by Acts of Parliament, or Letters Patent authorized by Act of Parliament, or Regulations made under Acts of Parliament, and in conformity with the powers granted by them, and that whatever it may be necessary to leave in a more loose state, should be declared to be so left only because it is necessary, and that time must elapse before all can be reduced to order. Until something be done in this way, it will scarcely be possible to make any satisfactory provisions for the establishment of Courts, and the administration of justice. But, on the other hand, it must be remembered that in proportion to the extent and variety of the subject-matter, and the obscurity in which it has been involved, must the difficulty be of applying a remedy to it. There cannot, however, be any such insuperable difficulty, that the relations in which the Crown, the Parliament, the Company, and the inhabitants of India stand to each other, might not be declared, and a foundation be thus laid upon which a regular and well defined structure of law and government, adequate to the good management of a limited district, might be established at present, and afterwards extended. As to the second branch of law, or the law of property, it would not be difficult to put the rights of property in things moveable, together with the law of contracts, upon one footing for all descriptions of persons in India. No great mischief apparently would arise from providing that, in such matters, the law of England should also be the law of India, and the benefit which would be obtained, would be that there would be the same law for all places. As to immoveable property, or property in land, it is a subject of much greater difficulty and embarrassment. The customary interests of the immediate cultivators of the soil are, throughout all India, obscure, various and uncertain. It is those interests which present the real obstacle to the admission of British persons to hold landed estates. There could not be any insuperable difficulty in providing against any danger arising to the Government from British residents in the interior, nor in protecting the native inhabitants against their open violence. A power of summary transmission would be more than sufficient. But the real difficulty would be to reconcile the existence of Zemindary and Talookdary rights in the hands of British persons, with the preservation of the customary rights of the Ryots or other persons holding under them.

Custom

Custom and usage ought to be the criterion of such rights, and if there was a sufficient number of good Courts of Law, well adapted in all their circumstances to the decision of such disputes, though it cannot be said there would be an end of the difficulty, yet the same means would be provided by which similar difficulties have been overcome in other states. But when the arrears of the Country Courts exceed a 100,000 causes, and when the Government, in despair of being able to provide a sufficient number of British Judges, are committing the administration of justice, for the most part, to native persons, it would seem to be illusory to hold out a general permission to British persons to buy lands throughout India. If they were to purchase the rights of Zemindars or Talookdars, and had no appeal but to a Mahomedan or Hindu Judge against the claims of the revenue officers from above, or the Ryots from below, they would very soon be glad to abandon their bargains. The only course which in such circumstances seems to show any reasonable prospect of forming any good laws respecting land, is that of separating some one province or district from the rest, in which the revenue has been already permanently settled, and in applying within that district all the means of Government to the purpose of adjusting and fixing the complicated interests of all the classes of landholders, and of reducing them by degrees to simpler and more convenient forms. This has been one necessary step in the progress of civilization in our own country, and in almost every other which has ever come to be far advanced in civilization; nor is there anything in the customary rights of Indian Biswadars or Meerasseedars, which it would be more difficult to deal with, if instead of attempting all India at once, a portion of the country of manageable extent were selected, than there has been heretofore in reducing the fantastic and vexatious varieties which had grown up in France and England under the feudal system, to the better forms of landed property which now prevail. If a general permission to purchase lands were to be extended only to some small province, such as the Delta of the Ganges, with a privilege for retired servants of the Company, of a certain standing and residence in India, to hold lands within a somewhat larger circle, the plan might be manageable. Sufficient Courts might be established or commissions issued for settling the landed tenures; a concentration of capital, skill and social civilization might be preserved, which would be almost as necessary to the welfare of a new and distinct set of proprietors of land established in an old country, as the concentration of labour is found to be in a new country; and if a law were made, that after a specified period, no other estates in land should be created by purchase within these districts than fee simple, or lease for years or for life, and provisions should be gradually made also for the purpose of ultimately accomplishing, not merely that which was done in Ireland, by the abolition of the British tenures, but that still more wholesome measure, which was accomplished in England at one stroke, by the English statute of Charles II. namely, the resolving of all existing varieties of tenures into two or three of well defined characters and incidents. The old tenures, which have been the spontaneous growth of different times and different circumstances, would fade away, or a perception of the benefits of the simpler system, would perhaps cause all estates very soon to be cast anew, by the choice of their owners, in these new moulds. At first, if such a safeguard should be thought necessary, the lands of Europeans need not be either inheritable or capable of being devised; but a condition might be annexed to such estates, that the executors, within a year after the death of the owner, should sell, and the produce of the sale should be a part of the assets. The children and widow, or the next of kin, or legatees of the owner, would in this way get the whole benefit of any improvements made by him, and yet the inconvenience that might arise from the land devolving upon infants or persons living out of India, or merely come thither, would be avoided. At some future period, when it might be thought right to make the lands of Europeans liable to succession, or capable of being inherited, they might be made, in the absence of a will, partable amongst all the children, but the owner might have the power of devising them by a registered will to any one of his children. This plan would neither exclude nor rigidly enforce the succession of one only, which by many persons is thought so beneficial, and it would not be very different in effect from the present law of England, where the ordinary course is the succession of one, but the owner in fee simple has the power of devising the estate to all, or of charging it, or ordering to be sold for their benefit. The upshot, indeed, of all that has been said and written for and against the rule of primogeniture in the inheritance of lands, seems to be very little more than that, in cases in which a father dies in possession of means which enable him to make his eldest son a pro-

V. Legislative Councils; Courts of Justice; Code of Laws.

prietor of a landed estate, at the same time that he can leave a suitable maintenance to his widow and a sufficiency to his younger children, it is better to make this arrangement than to divide equally the whole of his property, because it is desirable to keep up classes of landed proprietors of different degrees of wealth, as better persons to fill the gulf which lies between the Sovereign and the peasant, than mere functionaries of the Government; but that where a landed estate cannot be kept in the hands of one, except by leaving his other children in uncomfortable circumstances, it is better that the owner should divide the whole. The law, as it now exists in England, abstractedly considered, is better perhaps than that which is here suggested for India, because it tends less to joint-tenancy and tenancy in common, either of which impedes cultivation and improvement, and as we know from experience here, gives rise to ruinous disputes. But with reference to the habits and settled notions of the natives, it would not be desirable to provide at present, that the eldest son only, in the case of intestacy, should succeed to the father. The third head of law, or definition of private injuries, and the courses for obtaining redress for them, would not be very difficult of arrangement. The definition of private injuries might be taken in great measure from the English law, but simpler forms of action ought to be provided, and the principles only of pleading should be established, with a positive declaration that the minute technical rules of the English law were not to be binding, though, at the discretion of Judges, they might still be acted upon, like any other rules of right reason, where they might be found to be justly applicable. The settling of the fourth division of law would be easily practicable. Any one intelligent English lawyer, and one of the civil servants employed in the Nizamut Adawlut, with the assistance of the Reports of that Court recently published, might jointly prepare a Regulation in a few months, which would be for all persons throughout India as good a penal code as any now existing in the world. The arrangement of a system of Courts for carrying the code into execution is another matter, and some observations are made upon it in a separate Paper.

(signed) *Charles Edward Grey.*
Edward Ryan.

(A true copy.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

(Enclosure, No. 3.)

OUTLINE of a SYSTEM of COURTS for the *British* Territories in the *East Indies.*

IT is with a great distrust of our own competency that we offer any opinions respecting the establishment of Courts of Justice amongst the natives in the provinces. The Governor General in Council, however, having expressed a wish that we should do so, we will not decline the task. Our suggestions, if inappropriate, will be corrected by those who are more familiarly acquainted with the subject. It would seem to us to be desirable that a convenient and accurate division should be made of so much of the Indian territories as may be fitted for a system of regular government into Presidencies, Provinces, Zillahs and Pergunnahs. This is already done in some sort; but much convenience would result from a more complete division, and from one intended and calculated to be permanent. There would be a greater facility of inspection and control; and the channels for the administration of justice being fixed and customary, the flow through them would be easier and more regular, and the people would know better where and how they were to seek for what they wanted. A map of the political divisions of India, existing under the present system, has never been published. Why should it not? Instead of that surface of huddled names, Hindoo, Mahomedan and British, of which some represent natural divisions of the land, but the greater part political ones which have long been obsolete. In a considerable part of India it would not be difficult to make the complete and perfect division which is here suggested; it might be worth while that the authorities at home should alter, or empower the Governor General to alter, in several respects, the boundaries of the existing Presidencies; a new

a new one perhaps might be created. The Secretaries of the Government could easily make the division of each Presidency into Provinces; the principal officer of Government in each province could, with somewhat more trouble, make a subdivision of it into a convenient number of Zillahs; and the Judge of each Zillah might, in several instances, be able to subdivide it into Pergunnahs, defining the boundaries of each division, and making them unalterable, except by a regulation of the Governor General in Council. Where this could not be immediately done, the existing Courts of Moonsiffs and Aumeens might be continued.

2. Within every one of these divisions (Pergunnahs, Zillahs, Provinces and Presidencies) there might be one Court. The Pergunnah Courts might be under Native Judges. The jurisdiction of these Courts, in cases where compensation in money was sought, might be limited to causes in which the matter of dispute should not exceed a certain value, say 1,000 rupees; and in cases respecting lands, to those in which the lands lay entirely within the Pergunnah, and to criminal cases involving no greater punishment than two months' imprisonment. In each Zillah Court there might be three Judges sitting at the same time, but separately, except in cases of appeal, or when any of them should require assistance, when they should sit together. One (or, if necessary, even two) of the three Judges might be natives; and their jurisdiction might extend to all money cases where the matter in dispute should not exceed in value 10,000 rupees; to cases respecting land, in which the lands lay in more than one Pergunnah, but entirely within the Zillah; and to criminal cases not involving the punishment of death or banishment, nor imprisonment for more than one year; but they should have the power of sending any case of difficulty to the Provincial Court for trial in the first instance, or of reserving it until the visit of a Provincial Judge, as hereinafter mentioned. In each Provincial Court there should also be three or more Judges, sitting separately in all cases, except cases of appeal, when they should sit together, and having jurisdiction in all civil cases not triable by the inferior Courts, and in all criminal cases except treason. In each Presidency there might be one Supreme Court of Appeal, having also an original jurisdiction in civil disputes between privileged persons and bodies of the state, and in suits relating to important public charities, or any other matters which have the effect of putting lands in mortmain, and in criminal accusations of treason, or of corruption in the higher officers of the Government. There are some who do not deem it a right principle for the arrangement of a system of Courts of Justice, that an inferior class of Judges should be provided, and less formal proceedings established for the decision of small causes, than for those which involve claims of greater value. A small sum, they say, is of as much moment to a poor man as a large one to a richer, and the poor man has an equal right to a perfect administration of the law; but this can scarcely be adapted to practice, and is, at least, opposed to the established usage of almost all countries in the world in all time. There has hardly ever been any civilized state in which there have not been inferior Courts, and more summary modes of proceeding for the settlement of petty disputes; and if the means by which justice must be administered, and some of the incidents of law, of property, and of crime are considered, reason appears to justify this usual course. For the most part, where the claim is trifling, the circumstances on which it depends are not difficult. A small debt does not usually involve a very long account; a dispute about a cottage does not often depend upon an intricate title; a claim of a hundred pounds rarely makes it necessary to explain the doctrines of trusts and uses. Again, the consequences which are attached to the decision of small claims, do not so urgently require caution and sureness of judgment as actions of greater importance. In most cases it is not of equally evil consequence even to the parties themselves, whatever their circumstances may be, to make a mistaken decision as to fifty pounds as fifty thousand; nor in a sentence of imprisonment for a year, as in a sentence of death. Lastly, the smaller claims are every where by far the most numerous class, and taken altogether would occupy the most time, if they were to be tried with the same formalities as the most important cases. No state can find and pay Judges of the highest qualifications in sufficient number for all cases, and yet it is desirable that as many such Judges should be employed as can be found and retained. Surely, it is only plain sense to say, that these shall be employed upon the more difficult and important cases, rather than upon the ordinary and trifling ones. If laws are ever reduced to so much simplicity, that all are equally able to understand them, then all Courts may be similarly constituted; but at present it is desirable to have some of a more powerful constitution than can

V. Legislative Councils; Courts of Justice; Code of Laws.

be imparted to all, for the purpose of dealing with those classes of cases in which the greatest difficulties are to be overcome.

3. There should be only one appeal demandable of right for any error in fact. For error in law, whenever law is firmly established, and in all cases where corruption is imputed to the Judge or Court, the appeal ought to go to the Provincial Court at least. But for disputed facts, merely in a suit originally tried in a Pergunnah Court, there should be but an appeal to the Zillah, whose decree in that matter should be final; of a suit originally tried in the Zillah, to the Provincial Court, whose decree should be final; of a suit in the Provincial Court, to the Presidency Court of Appeal; and of the few suits which would be tried originally in the Presidency Court, to the King in Council; but there might be a discretionary power for the King in Council, or the Presidency Court of Appeal, upon special grounds, and more especially that of corruption in any Court or Judge, to call for any case whatever of the highest or the smallest importance, and if necessary, to suspend any decree made in it. In cases of appeal, the Judge, before whom the case should have been tried, should be obliged to state to the Court of Appeal a summary of the whole case, and the grounds of his decision; and the whole of the cases sent from the Provincial Courts to the Presidency Court of Appeal, should be reduced into English. Every Court might have the power of issuing writs of *habeas corpus* within the district through which its jurisdiction extended; and the writ might be demandable as of right in every Pergunnah and Zillah Court, but not in any Superior Court, except when any denial of the writ might have been made by an inferior Court, from which the party had a right to claim it.

4. One Judge of each Zillah might, once in the year, visit every Pergunnah Court of the Zillah; one Judge of each Provincial Court might visit every Zillah Court of the province; and one Judge of the Presidency Court of Appeal, every Provincial Court. The duty of the Judges visiting the subordinate Courts would be to inquire whether there were any complaints of corruption in the Courts, to receive an account of the proceedings of the past year, to inspect and correct the rules of practice and costs, and to try any causes which should have been adjourned until their arrival.

5. The Judges of the Pergunnah Courts might be named by the Zillah Judges annually, or every five years, and if any plan could be arranged for permitting the inhabitants of the Pergunnah to name a list of candidates, from whom one was to be selected, it would be so much the better. The Zillah and Provincial Judges might hold their stations by appointment from the Government of the Presidency, for seven or ten years, subject to removal for assigned grounds of misconduct or incompetence; but, perhaps, it would be desirable that in each Provincial Court there should be a Barrister as Judge or Assessor. The Judges of the Presidency Court of Appeal ought to be appointed by the Crown, partly from amongst the Company's civil servants, but some of them ought to be barristers of 10 years standing in England.

6. The Rules as to the districts within which causes, criminal and civil, should be tried, might be that each crime, according to the nature of the offence, must be tried in the Pergunnah, Zillah, or Provincial Court of that district, either in which the offence was wholly or partially committed, or in which the criminal was apprehended; every civil suit relating to lands in a district in which the lands are wholly situate; every suit relating to moveables or to contracts in the district within which either the plaintiff or the defendant was domiciled at the time of the cause of action accruing, or of the action being brought.

7. All persons without any other exception than that of the Governor General, Governors and Councillors, should ultimately be made equally amenable to every Court. The removal of the inconveniences which might at first oppose this, belongs rather to the formation of a general code of law, than to that part of it which would consist of the arrangement of a system of Courts.

8. For every Presidency there should be one principal officer appointed by the Government to see to the execution of the process of the law, and under him there should be officers for each Province, Zillah and Pergunnah, one for each. These officers should enforce and execute without preference and with equal diligence the process of any Court of Justice whatever which might come to their hands. They should be a distinct body from the judicial establishment, but amenable both civilly and criminally to all Courts of Justice, as the Sheriffs in England

England are, for corruption, falsehood or neglect. This system is preferable to that of each Court executing its own decrees, which tends to collision between the officers of different Courts, whereas the Sheriffs ought to be indifferently affected as to all.

9. The question of Trial by Jury, which has been so much discussed, might, perhaps, be provided for at first by having juries of five upon all criminal trials in the Provincial Courts, and full juries of twelve in the Presidency Court in the few cases which would come before it for trial. The Zillah and Pergunnah Courts might adjourn the more important of the criminal cases brought before them until the annual visit of a Judge from a superior Court, who might, in such instances, have the power of summoning a jury of five.

10. Instead of having any separate Courts of Equity, it might perhaps be desirable that in forming a code of law, there should be a specification of certain cases to which all Courts might be at liberty to apply a discretionary modification of the strict rule of law, subject to a report to be made to the Superior Court. Equitable modifications will be found necessary in every system. The great object is to make it manifestly apparent when a decision is made upon the ground of law or when upon that of equity, in order that the party interested may know how to apply for the correction of any error. When Judges have a general discretion to apply equitable principles in the administration of law, it is pretty nearly the same thing as having no law at all.

11. Jurisdictions as to wills and testaments and the administration of the estate of deceased persons, might be given to the Pergunnah, Zillah, or Provincial Court, according to the amount of the property and the place where it should be deposited or situated.

(signed) *Chas. Edwd. Grey.*
Edwd. Ryan.

(True copy.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

(Enclosure, No. 4.)

LETTER from the Judges of the Supreme Court to the Secretary of the Board of Commissioners for the Affairs of India.

OBSERVATIONS on various Questions touching the origin and nature of the Authority possessed by the Government and the Supreme Court of Judicature; with Suggestions for the better Administration of Justice, and the adjustment of the numerous points now involved in doubts and difficulties.

Sir, Court-House, Calcutta, September 1830.

WE have now the honour of complying to the best of our abilities with the request contained in your letter of the 15th of November last.

2. To exhibit distinctly our view of the circumstances in which the Court is placed, it is necessary to go through a statement which we not only fear will be tedious, but of which the substance must be familiar to the President and Board, yet the facts have been regarded in such different lights, that unless we communicate our own impressions of them, the foundations on which our opinions rest will be liable to be misapprehended.

3. The first East India Company was constituted for the establishing and improving of a difficult and valuable trade, for a limited time, and with a reservation to the Crown of a power to revoke the Charter when the good of the nation might require it.

4. In the reigns of William III. and Queen Anne, the old Company was induced to surrender its Charter, its corporate capacity was terminated, and its members were admitted into another Company which had been constituted, not by the Crown alone, but by Act of Parliament, and by Letters Patent of the Crown issued in pursuance of the Act; and a power was reserved of entirely putting an

V. Legislative Councils; Courts of Justice; Code of Laws.

end to the United Company after a certain time, and upon a certain notice, and upon the repayment of a sum advanced by the Company to the Crown.

5. The possessions of the old Company in the East Indies were transferred for a valuable consideration to the new one; and they were principally the island of Bombay, a town and fortress at Madras, and another at Calcutta. These three places, of which the property was then in the United Company, or those who held under them, were plainly recognized by the Crown in 1726, in Letters Patent of that date, to be British settlements, and within the King's peace and allegiance, and the Company who accepted the Charter must be deemed to have been parties to it.

6. Bombay had long been severed from the Mogul empire, but Madras and Calcutta probably were considered even subsequently to this period by the Indian Princes whose territories surrounded them, as nothing more than factories in which they had given a property to the Company, and allowed them to raise fortifications for their defence in times of disturbance.

7. In 1730 the Company was declared, in explicit terms, by the statute of the 3 Geo. II. c. 14, to be a perpetual corporation, and to be entitled as such to continue to trade in common with other British subjects, if at any time their privilege of an exclusive trade should be terminated. There had been a previous Act in 1710, intended probably to have the same effect, but of which the language was rather obscure and uncertain.

8. The powers of political government which had been given by the British Crown and Parliament, whether to the new Company or the old, down to the year 1757, were calculated mainly and almost entirely for the defence and protection of the three settlements above mentioned, and of the great trade which was carried on for the benefit of the nation.

9. In 1757, however, in the recovery and protection of the settlement at Calcutta, an operation in which the Company were assisted by the King's forces, the abilities of Colonel Clive were so much more than equal to the occasion, that he suddenly found himself the conqueror of the whole of the rich and populous provinces of Bengal, Behar, and Orissa; the capital was in his possession; and the Subahdar or Viceroy, whom he had defeated in battle, was killed by one of his own people. Colonel Clive and Admiral Watson, whilst the contest was going on, had promised a Mahomedan officer of the enemy, that if he assisted them he should be Subahdar; and Colonel Clive accordingly made him assume the title and state of Subahdar of the three provinces, though he had no claim by any appointment of the Mogul Emperor, nor by any hereditary right, but depended entirely upon the support of Colonel Clive, whose act must have required in this case, to be ratified by the British Crown, before it could be considered as standing in the way of any arrangement which the Crown or Parliament might choose to make respecting the conquest.

10. To pass over intermediate events, the Governor and Council of Fort William, on the part of the East India Company, in February 1765, made an agreement with the successor of this Subahdar, of which the substance was, that he should have the title and rank of Subahdar, and Nazim of Bengal, Behar and Orissa; but that the Company should nominate a Deputy Subahdar, who should not be removeable without their consent, and who should have the management of all public affairs, including the revenue and the appointment of officers in that department, but that these should be liable to be removed on the application of the Company. A British person appointed by the Company was to be always resident with the Subahdar, and no European was to be admitted into his service. The Subahdar agreed that the opinion of the Company should be the criterion of what would conduce to his honour and reputation; and the whole military force was put into the hands of the Company, to whom Burdwan, Midnapore, and Chittagong, three districts in Bengal, yielding a large revenue, had been some time before assigned, for the purpose of their maintaining an army.

11. At a later period of the same year, 1765, the Company obtained from the Mogul Emperor, after the battle of Buxar, a firman, which purported to be a grant in perpetuity of the whole revenues of Bengal, Behar and Orissa, upon condition of their providing for the expenses of the Nizamut, and paying to the Emperor annually twenty-six lacs of rupees.

12. In

12. In this manner within a short time, and before the close of the year 1765, the Company had taken into their hands all the means and forces of Government throughout Bengal, Behar and Orissa; and as a perpetual right to collect the land revenues necessarily implied the right of entering and measuring the lands, and of ejecting the tenants upon failure of payment, it was absolutely incompatible with any adverse possession in other hands of the dominion of the country. There were then but three modes in which it seems to have been possible to contend that the Company had the right to keep the powers they had obtained. First, as filling under the Mogul Emperor the offices of perpetual Dewan and commander of the army in these provinces, and as holding in perpetuity the three districts of Burdwan, Midnapore and Chittagong, with all such rights annexed as the Subahdar had formerly enjoyed; secondly, as having become in fact themselves the sovereigns of Bengal, Behar and Orissa; or thirdly, that, as British subjects, they had obtained them by conquest and treaty, in trust for the British Crown. It would not have been reasonable that a Company which had been created by the British Parliament, and was composed for the most part of natural-born British subjects, to whom the temporary privilege had been given of excluding all other British subjects from the sea-coasts of more than half the globe, should have seized the opportunity afforded by these privileges, to secure to themselves a power either as independent potentates, or as servants of a foreign prince, which might be turned to the injury of the country to which they owed their political existence: accordingly, the British Parliament, by the Act of the 13 Geo. III. c. 63, seems to have decided that the last of the three forms stated above was the only one in which the Company could be permitted to hold what they had so unexpectedly acquired; and as the circumstances were such as had not been at all contemplated when their Charter for trade was granted under the statute of the 9 William III., and as those circumstances might vitally affect the interests and constitution of Great Britain, provisions entirely new and different were justified and required by the occasion.

13. One difficulty was felt which would not perhaps at the present day have been thought so considerable. It was imagined that the land revenues, after defraying the expenses of Government, would still yield a large surplus, and this the Company claimed as their lawful profit, and that they had a property in the revenues. On the other hand, it was contended, and indeed it was resolved by the House of Commons, that the revenues belonged to the State. The dispute ended in a provision which has been renewed and still subsists, that the revenues and territorial acquisitions should remain for a limited period in the possession of the Company, without prejudice to the claim of the Nation: and the matter is now of less consequence than it was formerly, since the expenses of Government, to which the land revenues are specifically appropriated by Act of Parliament, are such as to make it unlikely there will be any great surplus, unless taxes should be imposed to a considerable extent; and even in the event of a surplus, the respective shares of the Company and the Public are ascertained by the statute.

14. To a certain extent the statute of the 13 Geo. III. c. 63, seems to be clear and decisive. It put an end to all question as to the dependence of the Company on the Parliament, and as to the absolute right of the British Legislature to regulate and direct the whole powers of political government which the Company might then have or thereafter acquire. The Parliament itself nominated in the statute the five persons who, for the next five years, were to be the Governor and Council in Bengal, and who were not to be removeable by the Company; reserving to the Company the power of appointing subordinate agents for the management of their commercial affairs; and although the Governor and Council were subjected to the lawful orders of the Court of Directors, the Directors were placed, as to matters of government, under the superintendence of the High Treasurer or Commissioners of the Treasury, and one of the Secretaries of State. Since that period the trade and property of the Company have been in law, according to statutory enactment, a distinct and separate thing from their powers of political government, but unfortunately not so distinct that they have not continued to be entangled at several points, and frequently confounded; and although the Company's powers of government, whatever they were, were at this time entirely subjected to the British Crown and Parliament, it was not made quite so plain and certain how far, and in what manner, it was intended to assert the sovereignty of the Crown and the authority of Parliament over the provinces in which these powers were to be

V. Legislative Councils; Courts of Justice; Code of Laws.

exercised, and especially to what extent it was intended that the powers of legislating and administering justice, which had existed under the former governments of the country, should survive the change which had taken place. The title of the Act implied only the establishment of dominion and law over the whole of a newly acquired territory and its inhabitants; there was no formal declaration in it even of the sovereignty of the Crown; the Settlement at Fort William, and the factories and places subordinate thereto, were mentioned distinctly from the provinces at large; and there were many expressions and provisions whence it might be inferred that the inhabitants of the provinces were not considered as having become British subjects, which would have been the legal consequence of the provinces having become British territory. But on the other hand, the whole civil and military powers of Government throughout the provinces had for some time been in the hands of the Company, and the Governors newly nominated and appointed by Parliament, were directed to exercise the same, including the ordering and management of the Revenue, which, as we have stated, was absolutely inconsistent with the dominion of the country being in any adverse possession; and there is no supposition on which it can be conceived to have been intended by the British Parliament, that British persons, appointed by the King in Parliament to exercise all the powers of government, should exercise them in any subordination, either formal or substantial, to any other Crown than that of Great Britain itself. Since that period neither the Mogul Emperor nor the titular Subahdar and Nazim, have ever been permitted to do any important act of authority within Bengal, Behar or Orissa. In the course of the debates which preceded the statute, the House of Commons had resolved, with reference to the revenues and territorial acquisitions, that "all acquisitions made by treaty with foreign Princes did of right belong to the State;" and by the statute they were declared to be left in the possession of a British Company, by the permission and will of the British Parliament. By the Charter of Justice, which was granted under the Great Seal in the next year, 1774, writs in the King's name were directed to be issued into every part of the provinces of Bengal, Behar and Orissa; and it has never, from that time until this, been disputed that these writs, against certain classes of persons at least, have always been legal, and of as full force and effect on the outer borders of the provinces, as in the town of Calcutta, or as in England itself. The writers too, who have been the best qualified to pronounce an opinion upon this subject, and amongst the rest Mr. Harrington, a Chief Judge of the Sudder Adawlut, who wrote and published, with the sanction of the Court of Directors, an Analysis of the Laws and Regulations of Bengal, have always dated from this statute, or from the earlier era of Clive's conquest, that sovereignty of the British Crown over Bengal, Behar and Orissa, of the present existence of which throughout the British Possessions in India there cannot be any question.

15. Perhaps in these circumstances, the most consistent and tenable ground on which the enactments of the statute of the 13 Geo. III. c. 63, can be placed, is the supposition of the sovereignty of the British Crown, and the authority of Parliament having been fully established by it, or by what had previously taken place, but that it was not intended to abrogate the previously existing laws of the new territories further than was expressly declared, nor all at once to abolish or preclude the powers of legislating, and of administering justice, which the Company had obtained from the former Governments, but only to subject these to the control and regulation, and to the will of the Crown and Parliament; at the same time that means were afforded to the Indian Government of bringing the whole territorities gradually into a subordination to the settlement at Fort William, and of making regulations by which, under the control of a Supreme Court of Justice, one uniform system of law and government, not repugnant to the laws of England, might ultimately be established. To leave, for a time, to the old forms of Government a distinct existence, was not only the course which the difficulties of the case seemed to point out, but it was perhaps, in some degree, required by good faith, and was recommended by considerations of humanity. It seemed to be implied, in the grant by which the Dewanny had been given up, and in the agreements which the Company had made with the Subahdars whom they had set over the provinces, that, for a time at least, the Nizamut or Mahomedan Government of the provinces should be maintained. The Crown and Parliament, though they had been no parties to these agreements, had not cancelled them, and were certainly bound, in justice, if they took any benefit from them, to observe the conditions which

which might be annexed; and although the obvious intention of those who were parties to the grant of the Dewanny, and the plain meaning of the words, were only that the Mogul Emperor should not be called upon for any of the expenses of the Nizamut, it might be contended that the use of the term, "Nizamut," which was a well-known office, including the whole government, excepting the collection of the revenue and its necessary incidents, implied some retention of its Mahomedan form and character; and under the existing arrangements with the titular Subahdars, there was a system of Mahomedan government in action in the provinces, at the head of which was placed a native nominated by the Company as Naib Subahdar, or Deputy Subahdar. Upon the supposition that the statute established the sovereignty of the British Crown over the provinces, it would have followed, but for these considerations, that the existing inhabitants would have become, not naturalized indeed, but still British subjects, though with the liberty perhaps of removing themselves and their property. Lord Mansfield's declaration of the law on this point, in the case of *Campbell* against *Hall*, in the very year in which the Charter of Justice was granted, must be held to be conclusive, and to have expunged the barbarous tenet of some lawyers of a former time, that a people, unjnstructed in the Christian religion could neither claim protection as their right, nor owe allegiance as a duty to the British Crown. But if the Act and Charter passed upon the supposition of the Nizamut and Dewanny being maintained in their Mahomedan form, except where Parliament had expressly altered them, or might afterwards interfere to do so, those who at the time were living under the Mahomedan form of government in the provinces might be considered as entitled, notwithstanding the territory had become British dominion, to stand in something like the same relation to the British Crown as the European inhabitants of factories had been permitted to maintain with the Mogul sovereigns and other Indian princes: a relation which preserved to them their characters and rights respectively of British, French, or Dutch subjects, though inhabiting the territories of a foreign sovereign. It was no longer indeed, as it seems to us, possible to contend that the natives born subsequently within the provinces would not be subjects of Great Britain, but they might perhaps be considered to be so by reason of their being subjects of an Indian realm which had become a dependency of the British Crown and Parliament, but which still retained, by permission of Parliament, some distinct powers of legislation and of administering justice, as portions unabrogated of their former laws. It was the more reasonable to lean to this interpretation, because the Mahomedan and Hindu inhabitants of those provinces, like the clients under the Roman law, or the vassals of the feudal system, and indeed the common people under every other state of government in which numerous chieftains or heads of political or religious classes exist, had been accustomed to think more of their fealty to the immediate chief upon whose land, or under whose protection or patronage they lived, than of the allegiance due to a common and supreme sovereign. The country was in a state in which the people ranged themselves under different flags, rather than according to boundaries of territory. The Hindus and Mahomedans could not suddenly and all at once have been brought under an entirely new, and fundamentally different, system of laws, without the most extreme difficulty and inconvenience; and as to the Mahomedans, there was the further consideration that their Koran enjoined obedience to those rulers only who protected their religion. No lasting inconvenience was necessarily connected with this view of the case. Treaties among Indian princes had been for the most part considered by themselves, unless there was some special provision in them, as binding only during the lives of those by whom they were made. Subsequent experience has shown that the expounders of the Koran find no difficulty in reconciling the allegiance of Mahomedans with that degree of toleration and protection of their religious usages which the British Parliament has felt no difficulty in sanctioning; and the Parliament is supposed to have always had the power and right, whenever it might choose to interfere, of modifying and altering those remnants of Mahomedan government which it permitted to exist in a distinct state. Thus the subsequent existence of the Nizamut is reconciled with the statute of the 13 Geo. III. c. 63, but is not supposed to have been left upon so stable a foundation as to have prevented it from being moulded into a more British form when those were dead who had any personal claims to insist on its continuance, and when the next generation of natives, without any abrupt offence to their prejudices and habits, might be brought more immediately under the influence of British institutions. The exercise also of certain powers by the British Governments in India is explained, which cannot, strictly speaking, be shown to be derived

V. Legislative Councils; Courts of Justice; Code of Laws.

from Parliament, though subsisting only by its permission, and to be exercised in subordination to its authority and will.

16. The first establishment of the Supreme Court of Judicature at Fort William was directed by the statute on which these observations have been made. The object in making them has been to explain the powers and jurisdiction which were given to the Court, and to show, at the same time, how imperfectly defined were the foundations on which it was placed, and by how many obscure difficulties it was surrounded. For these purposes there are still some other facts which it is necessary to revive and bear in mind. The first East India Company had very early been empowered to establish Courts, and in many cases to put in force within their settlements and factories the English laws; and similar power was given to the new Company by the Charter of the 10th of William III.; but in 1726 these Courts had been superseded, and there had been established at each of the settlements of Madras, Bombay and Calcutta, by Royal Charter, a Court, consisting of a Mayor and Aldermen, for the trial of civil actions, and a Court of Oyer and Terminer, consisting of the Governor and Council, for the trial of criminal offences; and the Covernor and Council were also constituted Justices of the Peace, and had continued to be so from that time. The Charter was surrendered, and a new one granted in 1753, with some alterations, but not such as to change materially the structure of the Courts as stated above. These Courts at Calcutta were acknowledged by all persons, after the conquests of Clive, to be no longer sufficient for the administration of justice. Besides their powers of political government, and their rights connected with the general revenue, under the grant of the Dewanny, the Company claimed the three districts of Burdwan,. Midnapore and Chittagong, as entirely belonging to them, and the property also of a large zemindarry lying to the south, but beyond the boundaries of Calcutta; and they had enjoyed for themselves and their servants the privilege of trading free of duty throughout the provinces. There had been numerous factories and smaller stations, called aurungs, in different parts of the provinces, where their agents and servants, and makers of salt, and weavers, and other persons employed by them, or living under their protection, were collected, and where the upper agents traversed the country in all directions; some of them were guilty of many violent and oppressive acts, and a state of the greatest disorder had ensued. It was expressly with a reference to these circumstances, to the insufficiency of the former Courts, and for a remedy of these evils, that the new Court was directed to be established; and the statute fixed the outline of its powers and authority, which were to be more distinctly and specifically developed in a Charter to be granted by the Crown, in pursuance of the statute.

17. The statute provided that the Court should exercise all civil, criminal, admiralty and ecclesiastical jurisdiction; and that it should be a Court of Oyer and Terminer and Gaol Delivery, for the town of Calcutta and factory of Fort William in Bengal, and the limits thereof, and the factories subordinate thereto; and that the Charter to be granted by the Crown, and the jurisdiction and powers to be thereby established, should extend to all British subjects who should reside in Bengal, Behar and Orissa, or any of them, under the protection of the Company; and that the Court should have full power to hear and determine all complaints against any of His Majesty's subjects for any crimes, misdemeanors or oppressions, and to hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Behar and Orissa; and any suit, action or complaint against any person who at the time of the cause of action arising should be employed by or in the service of the Company, or of any of His Majesty's subjects; and should hear and determine any suits and actions of any of His Majesty's subjects against any inhabitant of India, residing in Bengal, Behar and Orissa, upon any agreement in writing where the cause of action should exceed 500 rupees, and where it should be agreed that in case of dispute the matter should be determined in the Supreme Court; and that such suits or actions might be brought in the first instance before the Court, or by appeal from the sentence of any of the Courts established in the provinces: That the Governor General in Council, and the Chief Justice and other Judges of the Supreme Court, should have full power and authority to act as Justices, of the Peace for the settlement at Fort William, and the several settlements and factories subordinate thereto, and to do all things to the office of a Justice of the Peace appertaining; and for that purpose the Governor and Council were authorized

rized and empowered to hold quarter sessions at Fort William four times in the year: That in cases of indictment or information laid or exhibited in the Court of King's Bench in England, for misdemeanors or offences committed by Governors, Counsellors or Judges in India, the Court of King's Bench might award a mandamus to the Supreme Court, requiring it to examine witnesses and to receive proofs, and to issue such summons or other process as might be requisite for the attendance of witnesses; and in case of any proceedings in Parliament touching any offences committed in India, that it should be lawful for the Lord Chancellor and Speakers of the two Houses to issue their warrants to the Governor General and Council, and the Judges of the Supreme Court, as the case might require, for the examination of witnesses, and such examinations, duly returned, should be good and competent evidence. A like power of directing to the Supreme Court writs of mandamus or commissions to take evidence, was given to all the King's Courts at Westminster, in actions or suits of which the causes should have arisen in India; but an exception was made that depositions taken in this manner should not be evidence in capital cases, unless in Parliament.

18. In stating the fuller and more express ordinances of the Charter by which in the following year the Court was established, it may be as well, for the sake of brevity, to pass over the authority of the Court as a Court of Equity, of Admiralty, and an Ecclesiastical Court, and to describe only its other powers and jurisdictions: namely, first, an authority similar to that which the Justices of the King's Bench have in England by the common law, and to be exercised especially for the conservation of the peace; secondly, the hearing and determining of pleas in civil actions; thirdly, its jurisdiction as a Court of Oyer and Terminer and Gaol Delivery; and fourthly, powers to be exercised in assistance of proceedings, criminal or civil, instituted in Parliament or in the superior Courts in England, for causes of action or offences in India: and it ought to be borne in mind that whatever reason there may be to suppose that the statute of the 13th Geo. III. c. 63, was somewhat imperfectly worded, by reason of its being the production, not of calm leisure and clear views, but of a struggle of parties after the attention of all had been exhausted, and their conceptions disturbed, by the disputes of several successive sessions, there is no ground for thinking that the Charter itself, though its form must have depended in a great measure upon the statute, was drawn up otherwise than with great care. The case of *Campbell* against *Hall*, which was heard and decided in that very year, shows how much the minds of some of the principal lawyers of the time, and especially Lord Mansfield, had been engaged in those great questions which the Charter involved; and it is known that it was subjected to the inspection of Lord Thurlow, Lord Loughborough, Lord Bathurst and Lord Walsingham, and received their corrections and amendments.

19. Justices of the Peace had been established at Madras, Bombay and Calcutta, since 1726; and the statute of the 13th Geo. III. c. 63, enacted that the Governor General and Council and the Judges of the Supreme Court should be Justices of the Peace for the settlement of Fort William, and the settlements and factories subordinate thereto, and the Governor General and Council were directed to hold quarter sessions at Fort William. By the Charter which followed the statute, the Court of Quarter Sessions and the Justices were made subject to the control of the Court, for any thing done by them while sitting as a Court of Quarter Sessions or in their capacity as Justices, in the same manner and form as the inferior Courts and Magistrates in England are by law subject to the order and control of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of mandamus, certiorari, procedendo, error. By the fourth clause of the same Charter it was ordained, that the Judges of the Supreme Court should respectively be Justices and Conservators of the Peace, and Coroners, within and throughout the provinces, districts and countries of Bengal, Behar and Orissa, and every part thereof, and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England, by the common law thereof. It has not, as far we are aware, been questioned that under these provisions there was given to the Supreme Court the same power and control over the Court of Quarter Sessions, and over any of the individuals, amongst whom was each of the Judges themselves, who were constituted Justices of the Peace, as the Court of King's Bench has over Justices of the Peace in England; nor can it reasonably be contended that the authority of the Judges in this respect was limited to the settlement at Fort William, and the factories and places which had been

V. Legislative Councils; Courts of Justice; Code of Laws.

subordinate to the settlement before Clive's conquest. For the first, not only were the powers given in the fourth clause of the Charter expressed to be such as the Justices of the King's Bench had by common law, which not being those of local Conservators of the Peace merely, nor such only as were possessed by the other Judges, are known to have extended wherever the King's peace was to be preserved; but those who framed that clause of the Charter, as if to prevent the possibility of doubt, took care to employ the words, "throughout the provinces and every part thereof:" words which, except by a counsel in support of his case, can never be supposed to have been heedlessly used, or to have been meant, when sanctioned by the great seal, to be treated as an empty form by the Judges, to whom the Charter was given as the text of their duties. Secondly, the principal motive which led to the establishment of the Court was a desire to prevent the violence and oppressions of which British persons and other agents of the Company were guilty in the provinces, and for the correction of which the former Courts were declared insufficient. This could not have been done by the Court if the Judges were to have power as Conservators of the Peace only at Fort William or in the scattered factories, and to be powerless in the interjacent spaces; whilst British persons, who were acknowledged to be independent of the Nizamut and Mahomedan laws, might range the provinces at large. If a murder was committed or false imprisonment made in the provinces, by a person amenable only to the Supreme Court, it was necessary that the Judges, as Coroners and Conservators of the Peace, should have a right of instant investigation, and of affording immediate relief. Their powers could not have been adapted to the increase of territorial acquisitions, or in any way more effectual than those of the former Justices of the Peace, if they had been confined within the same bounds. Thirdly, it never has been contended that writs of habeas corpus to release from wrongful imprisonment may not be issued, or that they have not been lawfully issued, to British persons in the provinces; and we apprehend that it is upon the fourth clause of the Charter that the power of issuing any writ of habeas corpus at all will be found to rest; and that, in this respect at least, that clause is something more than idle words, and that the powers of the Judges given to them by it are not merely those of ordinary Justices, but such as belonged to the Justices of the King's Bench by the common law. Fourthly, it was in no way consistent with the supposition even of the provinces being a distinct and subordinate realm, that the King should appoint Conservators of the Peace there with the fullest power. It never has been questioned that the process of the Court, as a Court of Civil Pleas and a Court of Oyer and Terminer, was intended, as against British persons at least, to run through every part of the provinces; and for the purpose of enforcing the attendance of witnesses, this has not been restricted to British persons, but is compulsory on the native inhabitants as well as others. This being the case, it would have been difficult to find any good reason for confining to narrower local bounds the power given to the Judges for the conservation of the peace; nor has there ever been any way in which the process of the Court, in any of its several capacities, could be effectually enforced or supported, unless by a co-extensive power of preventing a riotous resistance of it. Lastly, this point seems to be placed beyond doubt by the 33 Geo. III. c. 52, s. 151, in which it is declared that the Governor General and Council, and the Judges of the Supreme Court, had heretofore been authorized by law to act as Justices of the Peace within and throughout the provinces, districts and countries of Bengal, Behar and Orissa; and since that statute, under commissions authorized by warrant of the Governor General, but issued by the Supreme Court, and sealed with the seal thereof, there have been Justices of the Peace resident in all parts of the provinces, who are acknowledged to be subject to the control of the Supreme Court. Supposing it then to be beyond dispute that the powers given to the Court in 1774, by the fourth clause of the Charter, were not limited to the settlement at Fort William and the subordinate factories, but extended throughout the provinces, the reasons for thinking that the native inhabitants were not exempted from them are, first, that in that passage of the Charter no such exemption is made; secondly, that the nature of the power and the objects of it are absolutely incompatible with any exemption of particular classes of persons. No Conservator of the Peace, at any time or in any place, no Justice of the Peace at present in the provinces, could make any distinction of persons in the discharge of his peculiar duties. If any affray or riot takes place, especially in the night time, it is impossible that there can be any selection of the rioters. If one of the Council, or a Judge of the Court, in 1775, or at any time previous to 1793, when they were

were the only Justices of the Peace, should have been resisted, and himself or his assistants imprisoned or maltreated by natives, when he was discharging his duty as a Justice of the Peace in the provinces, even though the primary cause of his being called upon to act might have been a breach of the peace by a British person, it could not have been maintained that the Court had no power to protect him, or release him from imprisonment; and there seems to be equal reason that the same power should now exist for the support and protection of those who act under the commission of the peace which is issued by the Court. If a criminal in the provinces amenable to the British law and the Supreme Court, and to no other tribunal, be harboured and abetted by natives, surely they are not to set at defiance the Justice of the Peace who is to apprehend him, and the Supreme Court to whom the Justice is answerable. We are aware of its having been said that the Charter exceeded in some particulars, and went beyond the words of the statute. We do not admit this to have been the case, but consider, on the contrary, that the directions of the statute, that the Court should exercise all criminal jurisdiction, and that the jurisdiction should extend to all the King's subjects who should reside in the provinces, implied and made it absolutely necessary that there should be a power similar to that of the Justices of the King's Bench, extending throughout the provinces; but even if this necessity had not been created by the statute, the Charter, for every purpose that was within the King's prerogative, and which was not prohibited in express terms by the statute, would not have been the less valid and effectual. Supposing the provinces to have become British dominions, then, whether the statute sufficiently declared that the Judges of the Supreme Court were to be Conservators of the Peace in the provinces, or not, it is certain that it did not constitute any other persons so as to preclude the Crown from exercising its prerogative of entrusting that duty to the Judges. The will and intention of the Crown upon this point was declared in very plain words in the fourth clause of the Charter; and the power there given (whether it was meant that there was to be any concurrent power or not surviving out of the old Mahomedan Government) was indicated, both by the words and by the nature and subject of the power, to be one which was to operate upon all within its sphere, without distinction of persons.

20. A second branch of authority and jurisdiction given by the Charter was that of hearing and determining all pleas, real, personal or mixed, respecting things real or personal in Bengal, Behar or Orissa, and all pleas of which the cause should accrue against the East India Company, or any of the King's subjects who should be resident within Bengal, Behar or Orissa, and against any other person who at the time of action brought, or cause of action accruing, should be directly or indirectly employed by or in the service of the Company, or any other subject of the King; and in cases in which the cause of action should exceed 500 rupees, against every other person whatsoever, inhabitant of India, and residing in Bengal, Behar or Orissa, who should agree in writing that in case of dispute the matter should be determined in the Supreme Court; and that in such cases it was provided, that if the suit should be brought in any of the Courts of Justice already established in the provinces, either party might appeal to the Supreme Court, which might by writ command the parties to surcease proceedings in the Provincial Court, and take upon itself the determination of the suit.

21. A third branch of jurisdiction was that of a Court of Oyer and Terminer for the town of Calcutta and factory of Fort William, and the factories subordinate thereto; and the Charter empowered the Court to try all crimes and misdemeanors committed within the town or factory, and the other factories, and to inquire, hear and determine, and award judgment and execution of, upon and against all treasons, murders, crimes, misdemeanors and oppressions committed in the provinces or countries called Bengal, Behar and Orissa, by any of the subjects of His Majesty, or any person employed by or in the service of the Company, or of any subject of His Majesty; and for this purpose to award and issue writs to the Sheriff to arrest and seize the bodies of such offenders, and to do all other necessary acts.

22. If these parts of the Charter, without a reference to those treaties or agreements which we have before noticed, had been strictly insisted upon and rigidly enforced, it seems to us that it might have been very difficult to maintain in law, that subsequently to the 13 Geo. III. c. 63, and supposing the provinces to have become in any manner dominions of the King, there could be any person domiciled within them, unless it might be the inhabitants of the European factories, who were

V. Legislative Councils; Courts of Justice; Code of Laws.

not to be considered, for the time at least, subjects of His Majesty, and consequently, according to the words of the Charter, amenable to the Supreme Court, both in civil and criminal suits; but by an indulgent construction of the Act and Charter, in conjunction with the agreements which had been made by the Company with the native Princes, and by supposing that such parts and powers of the old Governments still subsisted as were not expressly superseded by the Statute or Charter, those who could be considered as living under the protection of the Nizamut or Mahomedan system of law and government over which the Naib Subah had presided, seem from the first to have been held, upon the grounds which have been already stated, to be exempted from the jurisdiction of the Supreme Court as a Court of Pleas and Court of Oyer and Terminer; but even these were held liable to be summoned and compelled to attend the Court as witnesses, and without such liability the Court would have been unable to perform many of the important functions expressly and unambiguously assigned to it by the Crown and the Legislature.

23. These complicated circumstances, of which we have endeavoured to present an accurate statement, could not subsist for any length of time in the indistinct form in which they were left, without disturbance. Those disputes and disgraceful contests, between the Governor and Council on the one side, and the Judges on the other, ensued, on which we wish to make only one observation, namely, that an impression has been created that the Judges greatly exceeded their authority as defined in the Act and Charter, but that we believe it will be found on examination that this was not the case, nor considered by the Parliament to be so; and the Act of the 21 Geo. III. c. 70, in which it was found necessary to provide an indemnity for the unlawful resistance of the Court by the Governor and Council, and the Advocate General, made no similar provision for the Judges. The misfortune appears to have been, that the Legislature had passed the Act of the 13 Geo. III, c. 63, without fully investigating what it was that they were legislating about; and if the Act did not say more than was meant, it seems at least to have said more than was well understood.

24. Some important enactments were accordingly made by the statute of the 21 Geo. III, c. 70, as to the powers and jurisdiction to be exercised by the Court in future. First, that the Court should not have any jurisdiction in any matter concerning the revenue, or acts done in the collection thereof, according to the usage of the country, or the regulations of the Governor General and Council; and it was expressly declared to be expedient that the inhabitants of the provinces should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges; the Governor General and Council were declared to be a Court of Record, which might lawfully hold all appeals from the Country or Provincial Courts in civil causes, with a further appeal to His Majesty in Council, in suits of which the value should be 5,000 *l.* and upwards; that the same Court of the Governor General and Council should hear and determine all offences, abuses and extortions in the collection of the revenue, and punish the same at discretion, provided that the punishment did not extend to death, maiming or perpetual imprisonment; and that the Governor General and Council should have power to frame regulations for the Provincial Courts, which His Majesty and Council might disallow or amend; that no person should be subject to the jurisdiction of the Supreme Court by reason merely of his holding land, or collecting the revenue from lands held by him or under him, nor in any matter of inheritance or succession to land or goods, or ordinary matter of dealing or contract, by reason of his being in the service of the Company or the Government, or of any native or descendant of a native of Great Britain, but only in actions for wrongs, or upon special agreement in writing to submit the decision to the Supreme Court. The Governor General and Council were exempted from the jurisdiction of the Court for any act or order done or made by them in their public capacity, unless it should extend to any British subject, in which case the jurisdiction of the Court was retained; the Governor and Council in other cases continuing to be responsible to Courts in England; and provisions were made for the parties obtaining through the Supreme Court copies of any orders complained of, and also having the evidence in India taken by the Supreme Court. Provincial Magistrates, as well natives as British subjects, exercising judicial offices in the Country Courts, were exempted from actions in the Supreme Court for wrong or injury, for any judgment, decree or order of their Courts, and the like exemption was extended to all persons

persons acting under such orders; and in case of an intention to bring any information in the Supreme Court against any such officer or magistrate for any corrupt act, a certain notice was directed to be given before the party could be arrested or other proceedings could be taken against him. There was a proviso in the Act, that the Supreme Court should have full power and authority to hear and determine all and all manner of actions and suits against all the inhabitants of Calcutta, but that the inheritance and succession to lands and goods, and all contracts, should be determined by Mahomedan or Hindoo law respectively, where the defendant was a Mahomedan or Hindoo; that the rights of fathers and masters of families should be preserved; that nothing done according to the law of caste within the family should be deemed a crime; and that the process of the Court should be accommodated to the religion and manners of the natives.

25. It is deserving of remark, that in this statute, although the existence of the Provincial Courts for the determination of civil causes is noticed, and the Governor General and Council are empowered to correct abuses in the collection of the revenue, by any punishments short of death, maiming or perpetual imprisonment, there is no Provincial or Country Court of Criminal Justice mentioned; and up to the time at least of that statute, the Supreme Court, as a Court of Oyer and Terminer, and the Court of Quarter Sessions, are the only ones recognized by statute as capable, in the Presidency of Fort William, of hearing and determining charges of crimes and misdemeanors against the law, other than abuses in the collection of the revenue. In fact, the present Nizamut Adawlut, and the whole system of Criminal Courts subordinate to it, have not been established by a power created by the Crown or Parliament; they are referred to in the last statute by which the Government of India was renewed, namely, the 53 Geo. III, c. 155, but they were established by regulations of the Governor General in Council in 1793, in lieu of the Mahomedan Criminal Courts, over which the Naib Subah had presided; and they are a continuance of those Courts in a regulated form, not a new creation. In 1793, there had not been any power created by the Crown or Parliament, under which, except for revenue offences, the Indian Governments could establish Criminal Courts, subsequent to the Charter of the 10 Will. III.; and the powers of establishing Courts given in that Charter, seem to have been entirely superseded by the Charters of 1726 and 1753.

26. Since the Act of the 21 Geo. III. c. 70, the jurisdiction which the Court possessed in Bengal, Behar and Orissa, has been extended over all the vast territories which are now under the Presidency of Fort William; and there have been several enactments affecting the Court in various ways, but it is not necessary to state them *seriatim*. The foundations of its jurisdiction have been shown, and it appears to us, first, that the Court has now the superintendence and control of the Commission of the Peace throughout every part of the provinces of the Presidency of Fort William, in the same way as the Court of King's Bench has it in England: that the power of Justices of the Peace is one which for the most part must of necessity be exercised without discrimination of persons, and that the superintending power of the Court is of a corresponding character: that as a branch of the power given to it by the fourth clause of the Charter, for the conservation of the peace, and for the kindred object of relief against oppressions which are immediately consequent upon breaches of the peace, the Court possesses and exercises the power of issuing writs of *habeas corpus*, to relieve from false imprisonment: that this power is not locally limited to the town of Calcutta, but is co-extensive with the superintending powers of the Judges, as supreme conservators of the peace; and that, inasmuch as British persons at least, and natives employed by the Company or the Government, or any other British persons, are liable to be sued in the Supreme Court for trespasses, or indicted for offences committed in the provinces, and that, for any corrupt act, an information will lie against a judicial officer, whether native or European, there is no ground for saying that a writ of *habeas corpus* may not be directed to any of these, if the act complained of should include a continuing and subsisting false imprisonment. With respect also to the natives generally who reside in the provinces, under the Mahomedan law and the regulations of Government, it would be uncandid if we were not to admit, that before we saw the decision of the Privy Council upon the petition of Sir John Grant, we should have said, upon a mere question of legal construction, that the Court had a right to direct a writ of *habeas corpus ad subjiciendum* to a native, for the purpose of relieving another native from false imprisonment, because we look upon

V. Legislative Councils; Courts of Justice; Code of Laws.

this writ as a branch of the powers given by the fourth clause of the Charter, principally and especially for the conservation of the peace, and other objects closely connected with it; and conceiving that those powers must generally extend in law to all classes of persons, where they operate at all, we should have been at a loss to find any legal ground for restricting the use of that particular writ in a different way from the exercise of the other powers derived from the same clause and sentence of the Charter. At the same time we would wish it to be understood, that in such a case the statute of Charles the Second would be compulsory upon us, but that the application must be made under the fourth clause of the Charter, and upon the ground of our having a similar power to that which the Justices of the King's Bench have at common law; and as we should always have thought that in these circumstances we should have had to exercise some discretion, we do not conceive that we should have issued the writ upon the complaint of a native, against a native resident in the provinces, where there was any other lawful power competent and willing to afford more convenient relief. The decision of the Privy Council we receive with the utmost deference, and we are bound by law, and feel every inclination, to regulate our proceedings by it; but it is only the more necessary on this account, at a time when we understand that an Act is about to pass declaratory of the jurisdiction of the Court, that we should point out some questions of difficulty which might arise upon that decision. If a British person, especially a Justice of the Peace, or his assistants, should be opposed, and any of them should suffer false imprisonment from a native in the provinces, is the Court without power to relieve them, when if the party, being a British subject, should apply to the Government, and the Governor General in Council should make any order in support of the native complained of, those at least who should act under the order would be liable to the jurisdiction of the Supreme Court, by the express reservation in the 21 Geo. III. c. 70, s. 3? The jurisdiction of the Court as a Court of Civil Pleas, since the statute of the 21 Geo. III. c. 70, extends, first to the hearing and determining of all manner of actions against the inhabitants of Calcutta; and on account chiefly of the innumerable difficulties which British persons would have to encounter in pursuing their claims in the Country Courts, this term "inhabitants" has been always understood to have been intended by the Parliament to comprise all who have dwelling-houses and carry on trade in Calcutta. Secondly, the Court has jurisdiction over all actions of a transitory nature, and all of a local nature, of which the cause arises in Bengal, Behar or Orissa, against any subject of the King residing in Bengal, Behar or Orissa, at the time of the cause of action accruing or action brought; or any person residing there, who shall have agreed in writing to submit the matter, in case of dispute, to the Supreme Court; and without any agreement, against any person in the service of the Company or of a British subject, for any wrong or injury: but the whole of this jurisdiction is subjected to the exception, that the Court is not to interfere in any matter arising out of the collection of the revenue; and the term "subjects of the King" is certainly now to be construed with a reference to the considerations before mentioned, and to the provisions in the statute of 21 Geo. III. c. 70, by which it was declared that the Mahomedans and Hindoos in the provinces were to have their own laws, and that there were Courts for the administration of them in civil cases, from which the appeal lay to the Governor General in Council. The jurisdiction of the Supreme Court, as a Court of Oyer and Terminer, is established, first, throughout certain places within which it operates without any distinction of person. In practice, these have for many years been considered to be contracted to the limits merely of the town of Calcutta; originally they comprised, according to the words of the statutes and charters, at least a surrounding district and all the outlying factories; and it is not free from uncertainty what they legally are now. Chinsurah in Bengal, and Penang, Singapore and Malacca, stand in this respect in a very singular predicament at present, which will be easily understood by a reference to the statutes which provided for the Dutch possessions that were ceded in 1824 being transferred to the Company; and when the fact is adverted to, that the Presidency of Prince of Wales' Island has been recently abolished by the Directors, and that the places of which it consisted have been made dependencies of Bengal; but that there is still a Charter of Justice for the Presidency uncancelled, but under which there is nobody in India now who is authorized to act. Secondly, the Court of Oyer and Terminer has a power of trying all offences committed by His Majesty's subjects, or any person employed by them, within the Presidency, or by any of His Majesty's subjects anywhere

anywhere between the Cape of Good Hope and the Straits of Magellan; but in this instance also the term "subjects" it seems is to be construed with nearly the same restrictions that have been noticed in speaking of the jurisdiction as a Court of Civil Pleas, although, as it has already been observed, the Criminal Courts in the provinces are not founded upon parliamentary enactments. By the recent statute of the 9 Geo. IV. s. 7, 8, 56, 70, provisions are made, without any distinction between native and British persons, for the trial by the Supreme Courts of particular offences, whenever the offender is apprehended or found within the jurisdiction of the Court, although the offence may have been committed elsewhere. In cases of Hindus, however, the Court is forbidden by the 21 Geo. III. c. 70, s. 18, to treat as a crime anything which is done within the family of the party according to the law of caste; and the same statute, by the 8th section, seems to prohibit the Court, in its capacity of a Court of Criminal Justice, no less than as a Court of Pleas, from having any jurisdiction as to anything done in the collection of the revenue, according to usage or to the regulations of the Governor General in Council. It is not necessary to state over again the powers which are to be exercised by the Court in assistance of the superior Courts in England, or of proceedings in Parliament; but we wish them to be borne in mind, more especially for the purpose of showing the necessity which there is, if these duties are required from the Court, that its process for the procuring of witnesses and other purposes should be effectual in all parts of the provinces. This necessity indeed is found equally in the exercise of its jurisdiction as a Court of Pleas and a Court of Oyer and Terminer; and without a power to take lands, as well as the persons and goods, of those who are liable to be sued in the Court, its judgments in many cases would require to be aided by the Government or the Courts established in the provinces; and to make that aid effectual, it must not be precarious, but a matter of right. These observations, however, are applicable chiefly to the supposition of the Court continuing as at present constituted, and would require modification if the alterations recommended in the latter part of this letter should be thought deserving of alteration. There are other statutes, however, of later dates than those already mentioned, which have created additional occasions for the exercise of the powers of the Court in the provinces; as, for instance, in taking evidence upon divorce bills in the House of Lords; and the 26th Geo. III. c. 57, presents cases in which the Court would have to enforce in any part of the Presidency, by exchequer process, the execution of judgments obtained in England. In addition also to these branches of jurisdiction, though it is necessary to abstain from stating them at length, it must not be forgotten that the Court has extensive powers, which must be exercised in the provinces as incident to its other jurisdictions, especially that of a Court of Equity, and that of a Court for the relief of Insolvent Debtors.

27. Such, as far as we can conveniently state it in this letter, we conceive to be at present the power and jurisdiction of the Court according to law. We have next to advert to various circumstances which in some respects obscure, in others impede its powers, and in many make it doubtful whether the exercise of them be productive of good or evil.

28. It is obvious that the jurisdiction, as it exists, is essentially of a very peculiar character, and that many difficulties are inseparably connected with it. It is an exclusive personal jurisdiction as to a particular class, thinly scattered over a wide extent of country, amongst a dense population, who are considered to be themselves, for the most part, exempt from the jurisdiction, and to live under a very different system of law. In every part of these territories, nevertheless, the process of the Court must be enforced, and even lands must occasionally be seized and divided, or sold, although there is an absolute prohibition against the jurisdiction being exercised in any matter of revenue, which revenue is in fact a share, and a very large one, in every parcel of land throughout the Presidency.

29. These difficulties are aggravated by an obscurity which has been permitted to hang about the relations in which the Indian territories and the Company stand to the Crown and Parliament. Our own view is plainly and simply that the bulk of the Indian territories must be considered as having been annexed by conquest and cession to the Crown of the United Kingdom, but subject, of course, to the observance of all treaties, capitulations and agreements, according to the real intent and meaning of them, which have attended any cessions, and which still continue in force: that to a certain extent British law has been introduced; but

V. Legislative Councils; Courts of Justice; Code of Laws.

that, on the other hand, a very large portion of the old laws of the country have been left standing, but under the administration of British persons, the leading distinction being, that British law and British Courts have been introduced for British persons, and Mahomedan Courts and law permitted to remain for Mahomedan and Hindu persons; and these laws and Courts have been subsequently modified by certain legislative or regulating power, which itself also was a continuation of the old legislative powers of the native Governments, though it has been to a certain extent recognised and modified by Parliament. The sovereignty of the Crown of the United Kingdom we hold to be fully established throughout the provinces annexed to the Presidencies; and as an incident of the sovereignty, that the King in Council has in some cases the actual exercise, and in all the right of deciding upon appeals in the last resort, and of superintending the administration of justice: that the Imperial Parliament has as absolute a right of legislating for all purposes as in the United Kingdom itself; but that the East India Company, being from a long train of circumstances the most convenient depository and organ of the powers which it is necessary to exercise upon the spot, have had the Government principally entrusted to them; and being thus put in the place of those parts of the old Government by which the ancient and still subsisting laws and legislation of the country were wont formerly to be carried on, they exercise, through Governors in Council and their officers, not only the functions distinctly assigned to them by the Crown and Parliament, but some powers also in the administration of justice and in legislation, which, as we have already explained, are not, strictly speaking, derived from Parliament or the Crown, but are portions of the old institutions, which have been permitted by the Crown and Parliament to continue, and have been by Parliament entrusted, for limited periods, to the management of the Company, and recognised as subsisting in their hands. It is only upon this point that we believe any positive difference of opinion exists as to the nature and relations of the Indian Government, and we would fain believe that this is rather verbal than real, and subsists only through misapprehension. In adverting to it, we are anxious to guard against the supposition of our having encountered any difficulty from its being entertained, or even of our knowing it to be entertained, by any of those with whom our duties have brought us into intercourse. But amongst those who have treated of the rights of the Company, some certainly speak of the Company as having "*succeeded*" to these powers of the old native Governments, and seem to found a certain claim of right upon this notion of succession; whereas we conceive that, although to a certain extent the Company does hold the place of the old Governments, it is not by any succession as distinguished from acquisition, but that having been the instruments and agents of conquest, or the means through which cessions have been obtained, and having come into possession in that way, they have been permitted to retain it for a certain term by the enactments of Parliament. We may perhaps be in error in supposing that any consequence is attached to this distinction; the subject, however, has been so little brought forward, that the circumstance of the Crown and Parliament having exercised little or no control over some parts of these judicial and legislative powers, has been followed by an indistinctness of apprehension as to the real nature of them. The President and Board will remember, that it has heretofore been made a question, whether the Company had not what has been called, in terms not very easy to be understood, a delegated sovereignty; at other times it has been alleged that the Mogul Emperor still retained a formal and nominal sovereignty; some have suggested doubts whether the continuing possession of the Company, notwithstanding its being a creation of the British Crown and Parliament, is not a proof that the Indian territories have never yet been reduced into possession by the British Crown. It cannot be necessary to show in detail that any doubts, wherever they may exist, or by whomsoever they may have been stated, upon such points as these, must be a source of embarrassment to Judges, who have to issue process and execute judgment in the King's name in all parts of the provinces; who may at any time be called upon to ascertain the rights in India, not only of British persons, but of the subjects of the Christian Powers in amity with the British Crown; and who in law are supposed to have the control throughout all parts of the Presidency of the Commission of the Peace. Questions arising out of the most important statutes, such as the Navigation and Registry Acts, the Mutiny Acts, and others, exist in an undecided state, and are scarcely prevented, but by management, from being brought forward for decision, which, whenever it is called for, must turn mainly upon the species of relation in which the Indian territories stand to the United

United Kingdom. Some of the most important regulations of the Indian Governments have been made without the direct or express authority of Parliament, and are most easily justified as being the exercise of the old legislative powers of the former Governments, not superseded, and therefore continuing to subsist. Many of the regulations about 1793 were of this description. The imposition of taxes in the provinces is perhaps an instance; and it is a power which might come to be a subject of serious discussion, and if British persons were to be admitted to hold lands throughout India, of vital importance.

30. An offspring of the uncertainty alluded to in the last section, is the peculiar use which has been affixed to the terms "British subjects" in the Statutes and Charters relating to India; a source of difficulties to the Court which daily increases. The corruption of the legal signification of these important terms seems to have originated in the difficulty which was felt in getting over the provisions of the 13 Geo. III. c. 63, and of the Charter of Justice, by which the English laws were, in words, extended in these provinces to all His Majesty's subjects. The Directors, in their letter of the 19th November 1777 to Lord Weymouth, asserted that the natives were not British subjects: but notwithstanding all the difficulties of the times, and that the Ministers were pressed by the calamities of the American war, this point was not acknowledged, even in the statute of 21 Geo. III. c. 70; though expressions and clauses were allowed to be introduced in the statute, from which the result has been that it is impossible to say who were and who were not meant to be designated by those terms. Subsequently, as the British Government in India proceeded in organizing the judicial system for the provinces, including Criminal Courts, it became necessary that they should describe the natives as subjects at least of the British Government, and as owing allegiance to it. Under all these circumstances, if the question had been mooted in any English court of law, there would have been some difficulty in maintaining that the natives did not at any rate fall under the terms "subjects of His Majesty," whenever these words occurred in statutes relating to India. A direct decision upon that question, however, has been avoided; and to meet the difficulty, and with a view perhaps to other consequences, a distinction has been set up between "British subjects" and "subjects of the British Government;" and it is maintained, that generally where the term "subjects" occurs in the Indian statutes, it means "British subjects," and does not include those who are only subjects of the British Government. There is no stable nor sufficient foundation provided for this construction at present; for whatever restrictions the Parliament may think it right at any time to put upon their rights as subjects, it is certain that if the case of the Post Nati of Scotland, and that of *Campbell* v. *Hall*, are of any authority, and if the Indian provinces have become British dominions, all who are born within them are British subjects according to English common law, even though the Indian territories should be so far a distinct realm as to have a separate but subordinate right of legislation, and of holding Courts for the administration of justice. The distinction between British subjects and subjects of the British Governments in India has never, we believe, been formally declared in any Act of Parliament, but depends upon an ill-defined supposition of the continuance of the Mahomedan laws, and upon inferences to be drawn from the use of the terms "British subjects" in several statutes and charters relating to India, especially the 21 Geo. III. c. 70, and the Charters of the Madras and Bombay Courts, and upon a fluctuating usage; so that it is quite impossible to say, with any just confidence, who they are who belong to the one class, and who to the other. It seems to be agreed indeed that the terms "British subjects," as they must necessarily include all persons born in Great Britain, or whose fathers or paternal grandfather have been born there, so they do not include any Mahomedan or Hindu natives of the Indian provinces, who are not inhabitants or natives of Calcutta, Madras or Bombay, or any other place distinctly recognized as a British settlement or factory: but between these two extremes there are many doubtful classes. Even the Irish would not necessarily fall under the terms "British subjects," as used in 21 Geo. III. c. 70, s. 10. It is understood that the lawyers of the East India Company have affirmed that persons born in the British colonies are not, according to the use of the term in the Indian statutes, "British subjects," by reason of their birth-place, nor unless they are descended from a British-born father or paternal grandfather. The natives of Jersey, Guernsey and Alderney, have not so strong a claim as these Christian persons born in Calcutta, Madras and Bombay, but not resident there; and Hindus and Mahomedans, under similar circumstances, are liable to still more

V. Legislative Councils; Courts of Justice; Code of Laws.

cogent doubts. Do either Hindus and Mahomedans, or Indian Christians, born in the provinces, or Christian foreigners, become temporarily British subjects while domiciled in Calcutta, Madras or Bombay, so that for offences committed beyond the boundaries they would still be amenable only to the Supreme Court? Are the native Christians, or the subjects of Christian princes in amity with the Crown, who may reside in the provinces, to be classed with the Mahomedans and Hindus, or with British subjects? What is the effect of the subsisting treaties with France or other Christian States, in this respect? These and many similar questions do every now and then arise, and it is only by perpetual contrivance that they are prevented from becoming more troublesome. The Statutes and Charters relating to India present various applications of the terms in question; and in several important instances the term "subjects" is used by itself, and it is mere speculation and controversy whether the adjunct "British" is to be understood or not. These distinctions are the more perplexing, because the continuance of the Nizamut, which afforded some sort of explanation of them in Bengal, Behar and Orissa, cannot be alleged in respect to other parts of India, many of which have come under the sovereignty of the British Crown without leaving even a shadow of any former sovereignty lingering behind, and by a course of circumstances which present no alternative but that persons born there must be subjects of His Majesty in right of the British Crown, or subjects of nobody at all.

31. The circumstance which perhaps more than any other has contributed to make the jurisdiction of the Supreme Court inconvenient, and which is always brought forward as marking its unfitness for the duties assigned to it, is not a vice of its original constitution, but the improvident addition to its jurisdiction of all the immense territories which have been subsequently added to the Presidency of Fort William. It was not perhaps impossible that the Court might have been made competent to exercise an effectual and salutary jurisdiction throughout all Bengal, Behar and Orissa, which comprise the whole space to which its powers at first extended; but it never could have been made convenient by any ingenuity of legislation, that its powers of original jurisdiction should be exercised even as to British persons throughout the present Presidency of Bengal, of which some parts are a thousand miles distant from it, and where the means of communication are not to be supposed the same as in England; and as there has been an inclination rather to compress the powers of the Court, than to develope and assist them, it may easily be conceived that when called into exercise in a weak and shackled state, in so vast an area, they are at once ridiculously impotent, and yet very much in the way.

32. It appears to us to be matter for regret that there has never been any plan avowed and distinctly laid down for the gradual assimilation and union of the two systems, which it was necessary at first, and to a great extent is still necessary to maintain, for the British and the natives respectively. In 1773 there seems to have been at most only a temporary obligation to preserve any of the Mahomedan forms of government, and they have by degrees been almost obliterated, but what has come in place of them rests partly on the old basis, and there are still two systems, scarcely less adverse than at first, working with discordant action in the same space. Nothing would be more unreasonable than to attempt to impose upon India generally the British laws as they exist in the United Kingdom, or even in Calcutta; but we are confident that before this time, if there had been a hearty co-operation of all parts of the Indian Governments, one uniform system, not English, yet not adverse to the constitution of the United Kingdom, might have been established in some provinces, to which both British persons and natives might have accommodated themselves, and which would have been fitted at future opportunities to be extended to other districts. This would have been done if the whole legislative and judicial powers of Government had been under one control: but this has never been the case. The regulations of the Government for the provinces, and civil causes tried in the Provincial Courts, where the matter in dispute is of a certain value, are nominally subjected to the control of the King in Council, as much as regulations which are registered in the Supreme Court, or causes heard there; but it is scarcely more than in name that this exists; and with the exception of a few appeals in civil cases, it may be said that the legislative and judicial functions of the Indian Governments in the provinces, extensive and active as they are, are exercised under no other control than that of the Directors and the Commissioners for the Affairs of India, whilst the administration of law for British persons in India is in theory independent both of the Indian Governments, the Directors and the Board,

Board, and British subjects who choose to abide at the seats of Government cannot be directly subjected to any legislation but that of Parliament, or regulations registered in the Supreme Courts. In these circumstances it has naturally been the inclination of those who have the principal influence in Indian affairs, to build separately upon the foundations of that system which is most subjected to themselves, and as it were belongs to them, rather than to bring the remains of the old institutions of the country into any subordination to Courts established upon the basis of Parliamentary enactments, and in many respects certainly ill adapted to the circumstances of the country. Thus two principles of government have been maintained in a sort of struggle with each other, which thwarts and weakens each, and is not in any way advantageous to either. If one of them was to prevail, even to the exclusion of the other, the result must be an interference of the Imperial Legislature to reduce the Indian territories to their true relation with the United Kingdom, that of distinct but entirely dependent dominions, with peculiar though not adverse laws, separate, but entirely subordinate powers of internal legislation, and an administration of justice always liable in all its branches, if not actually subject to the superintendence and control of the King in Council, or some other Courts of the United Kingdom, or at least of some Court constituted by the Crown. Why should not the most convenient district that can be named in these vast territories be set apart for the purpose of forming upon this basis one harmonious system, suited to all classes of persons, and compounded of the two jarring ones which at present divide the people, debilitate the administration of justice, and harass the Government. It has been said, that this is only selecting a part of the mass for the purpose of making experiments upon it; but as every body seems to be agreed that something must be done, we suppose they mean that some experiments must be made, and we seem to differ from those who are adverse to the selection of one province, principally in this respect, that we think it wiser to attempt the introduction of a better system upon a small scale at first, and in that place only, where all the force of Government may be most readily applied in its support, and where its progress will be most immediately subjected to the presence and inspection of those who must direct it.

33. The next head of difficulties is one of which we feel considerable difficulty in speaking. But our motives and the necessity of exhibiting the whole of the case, must be our excuse for saying that some of the inconvenience to which the Court is subjected, and some of which it is the apparent cause, are attributable to the imperfections of the Acts of Parliament and Letters Patent, under which it has to act, or by which it is affected. It would seem as if either from the intricacy of the subject, or an apprehension that difficulties would be encountered in Parliament when modifications of the powers of the Supreme Court have been desired, they have been sought not by positive and plain enactment, but by the introduction of something in an Act or Charter, which without being likely to excite too much discussion at the time, might nevertheless be available afterwards, as showing an intention on the part of the legislating power to make the required provision. Nothing can be more vague in most respects than the important statute of 21 Geo. III. c. 70, it provided that persons should not be subject to the juris diction of the Court for this or for that reason, but left it nearly as open to argument as it was before, whether all those must not be held liable who could be shown to be subjects of His Majesty; it left in the hands of the Government powers of general legislation, and of life and death, which it did not notice, while it specifically imparted to them limited powers of making regulations, and inflicting in certain cases punishment short of death. It employed the terms "British subjects," and "European British subjects" in such a manner, that it is impossible to say what was really meant by them: it expressly left to the Supreme Court the determination of all suits respecting the lands of certain classes of the natives, yet forbade it to interfere in matters connected with the revenue, which is a part of all lands throughout all India; and finally, it made certain provisions for registration, which were palpably impracticable from the first, and were scarcely attempted to be carried into execution. We would rather not go through the invidious task of pointing out the indirect and inconclusive, but not therefore inefficient provisions of later statutes; but we can scarcely avoid to notice some of the variations which have been made in the Charters of the Supreme Courts at Madras and Bombay, and the doubts and difficulty which arise out of them. The Acts of Parliament which directed the issuing of these Letter Patent, provided that they

V. Legislative Councils; Courts of Justice; Code of Laws.

should confer the same powers on the new Courts as those which were possessed by the Court at Fort William; but notwithstanding this, the powers granted are very materially different. To pass over the differences as to the appointment of Sheriffs, and the admission of barristers and attornies, it will be found, that in the definition of the jurisdiction of the more recent Courts, their powers are generally restricted to such persons as have heretofore been described and distinguished by the appellation of "British subjects," whereas, as it would have seemed to us the powers which the Justices and the Court were to possess in the provinces as Conservators of the Peace, and as presiding over the commission of the peace, whether the criterion of their extent was to be the extent of those granted to the Court at Fort William, or the possibility of their being used to any good purpose must be exercised, if exercised at all, without distinction of persons. Again, the Bombay Court is prohibited from interfering in any matter concerning the Revenue even within the town of Bombay, which is directly opposed to the 53 Geo. III. c. 155, ss. 99, 100. Then all natives are exempted from appearing in the Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in what is called a Native Court. This would for many purposes place the Court entirely at the disposal of the Government, who regulate the usages of the Country Courts as they please; and whether any suit arising beyond the limits of the towns of Madras and Bombay, should be determined at all, or whether any offence committed there should be punished by the Court, or whether it should be able to collect evidence in aid of any proceedings in England, would come to depend entirely upon the pleasure of the Government. Whether this would be right or not, is not the question; it is inconsistent with the duties assigned to the Courts by statute. In the clause which purports to define the Admiralty jurisdiction of the Courts at Bombay in criminal cases, its powers are restricted to such persons as would be amenable to it in its ordinary jurisdiction, which is again at variance with the 53 Geo III. c. 155, s. 110; if it is to be understood from this passage in the Charter that the jurisdiction was meant to be limited to such persons as have been described as British subjects; but it is not very clear what is to be understood by ordinary, as opposed to any extraordinary jurisdiction of the Court. This indeed is another species of the defects which we are noticing, namely, that limitations of the jurisdiction have been thus introduced by allusion rather than plain declaration. In one way or another, sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions which, to persons unacquainted with India, may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established upon the same footing as the old one, by something being accidentally mixed up with the constitutions of the new Courts which is essentially different from the old, and would be destructive of their efficiency: in some or all of these ways, the Supreme Courts have come to stand at last in circumstances in which it is a very hard matter to say what are their rights, their duties or their use.

34. Though we attribute the principal imperfections and inconvenience of the Supreme Court to the sources which we have described, we have already intimated that there were inherent and almost insuperable difficulties connected with its original constitution, and the circumstances with which it has always had to deal; and we by no means intend to assert that there have never been any faults on the part of those by whom the business of it has been conducted. The application of the forms of British law to the settlement of differences amongst the Hindus and Mahomedans, even of Calcutta, is full of difficulty. The Hindu laws especially are one of those ancient systems which the history of the world shows to have existed, in a certain stage of society, all over Asia and a great part of Europe, and of which the main spring was the influence of the priesthood. When this is removed, and laws, which were calculated to be enforced by persuasion, by sacerdotal influence, or religious awe, have to be exercised by means of English Courts and lawyers, and the legal process of writs of execution, it is scarcely possible that the machinery should

should work well. This remark is peculiarly applicable to the family quarrels of the Hindus; but the inconvenience, great as it is, seems to be necessarily connected for a time with the marvellous position in which England is placed in relation to India. The ordinary state of a Hindu family in respect of property is that of coparcenary between all the males, but any one member has a right to claim a partition. Upon the death of a Mahomedan, his property, including land, is shared amongst his relations, according to peculiar rules, which make it necessary for the purpose of calculation, to subdivide it into minute portions. The mode of settling all cases of this kind in the Supreme Court is by suits in equity, and it may easily be imagined that trouble, expense and delay must attend such proceedings, in which innumerable papers and accounts of many years' standing, in three or four languages, must be produced, translated, given in evidence and investigated, and in which, after all the other difficulties have been overcome, the decrees of the Court, including partitions of interests in land, and consequently the inspection, admeasurement, valuation and allotment of the lands, are to be carried into execution by the European Officers of the Court in the provinces, where the uncertain interests of many parties not included in the suit are involved in the same parcels of land, where the Court is prohibited from interfering in any way with a revenue which is intimately and inextricably mixed up with every piece of land, and where the Court is also regarded somewhat in the light of an intruder, or at best a necessary evil, by the civil servants of the Government by whom the provinces are managed. Add to this, that when once dissension has arisen in a native family, nothing can exceed the perverseness with which their disputes are carried on. The object is not to obtain their rights, but to ruin each other. Sometimes they will make a truce for years, and then revive their contentions with fresh zeal. At all times they are represented to be difficult to deal with as clients, and from understanding imperfectly the proceedings of an English Court, to be obstinate and suspicious. Besides, it cannot be expected that any class of the professional persons by whom the business of the Court is to be conducted should, in general, be quite equal, in all desirable qualifications, to those who exercise corresponding functions at home. We make no exception in this remark, even of the highest offices; but we have in view principally the conduct and management of suits under circumstances which are much more difficult, and much more opposed to an accurate and beneficial exercise of the legal profession, than any that occur at home. In almost all suits for partition amongst native families there is another and monstrous difficulty, from the Court having to regulate the disposition of large funds appropriated to the superstitious uses of their religions. Again, some of the longest, most intricate and expensive suits in the Court have been occasioned by the charitable or religious bequests of Christians of various sects. In some of these the Supreme Courts have been called upon to apply money to the benefit of Roman Catholic Establishments at Goa, in others to Greek or Armenian Churches on Mount Lebanon. A commission has been prayed to inspect the records of the Vatican. One highly important case, which long has been and still is before the Court at Fort William, and which, there is little doubt, will ultimately come before the King in Council, presents the following circumstances: A Frenchman by birth, professing no religion but Deism, and who had for some time resided, and at last died at a very advanced age, in the territory of Oude, which is, according to treaty, the dominion of an independent Mahomedan King, leaves great wealth, a part of which is in land. Some of the property, at the time of the death, is within the Kingdom of Oude, and some within the Presidency of Bengal, and some is vested in the public securities of the British Government. By his will he bequeaths legacies to relations in France, and gives pensions for life to a set of native concubines and servants in Oude; makes large charitable bequests to the city of Calcutta, and the city of Lyons in France, involving the establishment of public schools; and directs also the establishment of what he calls a college, but which is to be connected with a sort of caravanserai, where his tomb is to be kept lighted and watched, in the Foreign and Mahomedan capital of Lucknow; and, after providing for all these, there is likely to be a residue, to which, when they can be found out, the next of kin of a man who had left France in a state of poverty sixty years before, and who had no kindred in India, are entitled; and there is landed property in Calcutta to which his heir-at-law, when discovered, may have a claim; and this heir, according to the English law, is not one of the next of kin, who are only of the half blood. The case is not brought into the Court until the assets have been many years in the hands of a mercantile firm, and are involved in a maze of accounts; once brought

V. Legislative Councils; Courts of Justice; Code of Laws.

before it, however, the Court cannot decline to proceed, yet is only enabled to proceed in respect of the public charities, at the instance of the Advocate General of the Company, whose official relations are, in some respects, calculated to retard his motions. When such circumstances may occur, and when it is recollected that the Court has no less than seven jurisdictions combined, as a Court of King's Bench, a Court of Civil Pleas, a Court of Oyer and Terminer, a Court of Admiralty, a Court of Equity, an Ecclesiastical Court, and a Court for the Relief of Insolvent Debtors, it will not perhaps be thought very surprizing if complaints against it should sometimes arise out of the suitors' disputes. Except, however, in equity cases, there is no ground for any complaint of tediousness in the determination of suits; nor even in equity is the delay to be ascribed to the fault of the officers of the Court. There are no arrears in the Court in any of its departments, and there scarcely ever have been any. The heaviness of the costs in some equity suits, we have no doubt, is a great evil, though perhaps not greater than in England; and it will not be found to arise so much out of any particular fees, as from the misconduct or miscarriage of the equity suits, attributable, in a great degree, to the difficulties which we have noticed, but arising partly no doubt, in some cases, from the inattention or unskilfulness of professional men, and still more perhaps from the waywardness and unmanageable character of the native clients. If we were called upon to devise a remedy for such evils, upon the supposition of the continuance of the present constitution and jurisdiction of the Court, we do not know that we could suggest any other than a reform of the system of equity pleading, a settlement of all bills of costs at stated periods of the year, by the Judges themselves, accompanied by a judicial inquiry into the conduct of each suit, and a division of labour and allotment of business amongst the Judges, by which a more rigid discipline, if we may use the expression, in the conduct of the whole business of the Court might be enforced.

35. We have now, however, in pursuance of the wish expressed in your letter, to submit to the consideration of the President and Board some larger views of the arrangements which, in our opinion, would best conduce to the attainment of the objects for which the Supreme Court was constituted. If we should appear to bring forward any considerations which may be thought to belong rather to general policy than to law, we trust it will be perceived that this is not done to any greater extent than is necessary for the purpose of explaining the remedies which seem to us to be required for the evils that have been adverted to in the former part of this letter, and are strictly a part of the subject respecting which we are called upon to speak. We are sensible, however, that we run the risk of suggesting what may be at variance with views already formed, or with transcendant considerations of general policy, of which we have no information. This is a disadvantage for which we have no other help than to beg that what we offer may be received as it is offered, in the light of very humble suggestions, tendered with much distrust of our own judgments, and with no other desire than to assist His Majesty's Ministers, as far as we can, in arriving at just conclusions of what is best to be done. Our observations are made upon the supposition that India will remain under the government of the Company, subject to the control and regulation of the Crown and Parliament in all affairs of government, whether executive, judicial or legislative.

36. It appears to us to be desirable that all the territories which are permanently annexed to any of the three Presidencies, and in which justice is administered and the Revenue is collected by officers of the British Government, should be declared, in the most unambiguous manner, to be dominions of the Crown of the United Kingdom; that all persons born within the same are subjects of that Crown, owe allegiance to it, and are entitled to protection from it; and that all persons residing there owe that temporary allegiance which would be due from them, if resident in any other dominions of the Crown. But this, perhaps, is a step which would not be taken by the British Parliament, if it were to be considered as securing to the countless population of India the rights of natural born British subjects. If the legislature should not be satisfied by that exclusion from certain rights, to which all the unchristian natives would be subject, as the law now stands, it might be necessary to enact, that the natives of the British territories in India shall not, by reason merely of their birth-place, be entitled, when resident within the United Kingdom, or any of the dominions of the United Kingdom other than the Indian territories, to any rights or privileges as subjects, beyond what would be allowed to the subjects of friendly foreign states, and that they shall be distinguished by the name of Indian

subjects

subjects of the Crown of the United Kingdom, with a proviso, that all persons born in India, whose fathers or paternal grandfathers shall have been British subjects, and all other persons who, according to law, would be natural born British subjects, if born in any foreign state, shall equally be natural born British subjects, if born within the British territories in India. If such provisions would have the effect of depriving any classes of the Indian natives of rights to which they may at present be entitled as natural born British subjects, the distinct acknowledgment of their being at least subjects, and entitled to protection, and the foundation which would be laid by the provisions hereinafter mentioned for their enjoyment, in a part of India, of legal rights, would appear to us to be more than an adequate compensation for anything which could be justly said to be taken away.

37. That a certain district round Calcutta should be distinguished by the name of the Province of Calcutta, and that for the government of this district there should be, to a certain extent, a separation of the executive, judicial and legislative powers, by means of a Legislative Council, and a Court of Appeal or Council of Judicature being added to the existing political body of the Governor General in Council. Within this province all subjects of the Crown of the United Kingdom, as well British as Indian, without any distinction, should have the right of purchasing, holding and inheriting lands, and the laws throughout that district should be rendered as inviolable, and the administration of justice as regular, and the security of person and property as perfect, as possible. We do not mean that the English laws should be established, but that, subject to certain restrictions, a system should be adapted by the Legislative Council to the whole circumstances in which the province would be placed. It seems to us that the Delta of the Ganges, or in other words, the territory lying between the western or right bank of the Bhaugiruter and Hooghly rivers, and the eastern or left bank of the main stream of the Ganges, would be a district, at present, of convenient size, and the best situated for this purpose.

38. It might be declared that all the rest of the territories of this Presidency, although they be the dominions of the Crown, and the inhabitants be subjects thereof, yet by reason of their magnitude and great population, and the various customs and habits of the people, and the intricacy of the landed tenures and other circumstances, they cannot for many years to come be adapted throughout their whole extent, to an equally regular system of government, and for these reasons the whole government of the same might be declared to be vested as before in the Governor General in Council, subject to the former restrictions and qualifications; and it might be provided, that whatever persons should choose to abide in, traverse or enter the said territories, should be to all intents and purposes liable to the laws and regulations in force there, and to the authority and powers of the Governor General in Council, in like manner as any of the Indian subjects of the Crown would be, and that neither the Supreme Court nor any of the other Courts established or to be established within the Province of Calcutta, should have any jurisdiction whatsoever, or exercise any authority, powers or process whatever, within any of the said territories, other than such as hereinafter are expressly and particularly mentioned, but that in all other cases whatsoever when it should become necessary for giving effect to any decree, judgment or order of any of the said Courts, that the lands, goods or body of any person should be seized and taken upon any mesne or final process within the said territories, it should be done by such ways and means, and in such manner and form, and according to such regulations, as should be provided for that purpose by the Governor General in Council. Upon the great question, whether British persons should be allowed to hold lands in the provinces, we should say, that if they would be contented to take the privilege upon the terms above stated, it might be granted. It seems to us that the necessity of the case requires, as to the greater part of the provinces, that the Governor General in Council must have legislative, judicial and executive powers, subject to no control but by the superior authorities in England; but if Parliament, clearly understanding and being prepared to adhere to this, should choose to put all the subjects of His Majesty, of whatsoever description, upon an equal footing in the provinces, we should not apprehend any serious danger to the State, nor any oppression of the natives, which the Government would not be able by a stern exercise of its power to restrain. But there are two things which it does appear to us to be highly desirable to guard against in any general admission of British persons to the provinces: First, that of giving rise to a delusion that there

V. Legislative Councils; Courts of Justice; Code of Laws.

there are the means at present of establishing and enforcing good laws throughout all India, in such a manner that it might be advantageous to British persons to purchase landed estates throughout the provinces. Secondly, the leaving an opening and pretence for subsequent irritation and clamour on the part of British persons so admitted to the provinces, upon the ground of their not enjoying there the rights of English law. If the provinces are to be opened to them, let it be universally understood so, that no doubt may remain, nor any ground for subsequent reproach, that they go to live under a despotic and imperfect but strong government, that they carry with them no rights but such as are possessed there by the natives themselves, and that it is impossible at present to give them either that security and easy enjoyment of landed property, or those ready remedies for private wrongs which more regularly constituted governments afford. A tolerable system of criminal judicature, we believe, might even at present be established throughout the greater part of India.

39. The Supreme Court, besides being restricted from exercising within the territories lying beyond the boundaries of the province of Calcutta, any other jurisdiction than such as is hereinafter expressly mentioned, might likewise altogether cease to be a Court of original jurisdiction within that province, except in the cases hereinafter expressly and particularly mentioned, and the authority, powers and jurisdiction of the Court might thenceforth be as follows: First, that within and throughout the province of Calcutta, it should have a complete superintendence and control over all other Courts and Magistrates. Secondly, that no sentence of death by any other Courts of the province should be executed without the warrant of the Court, and that it should have an original and exclusive jurisdiction as to all those offences which, for distinction, are called offences against the State, and are of a treasonable or seditious nature, committed within the province of Calcutta. Thirdly, that it should have an original jurisdiction as a Court of Chancery, as to all conveyances or devises of land, or gifts or bequests of money for charitable or religious purposes, or other permanent public objects. Fourthly, that it should have an original Admiralty jurisdiction as to all crimes maritime punishable with death, and that the King's commission of Vice-Admiralty for the trial of prize causes should be directed to the Judges of the Court. Fifthly, that it should be, in all cases, a Court of Appeal from the Courts of the province of Calcutta. Sixthly, that it should be lawful for the Governor General, by commission, to authorize and empower any one or more of the Judges to exercise any judicial function, either original or upon appeal, or by way of inquiry, within the territories lying beyond the boundaries of the province of Calcutta, and respecting any matters arising within the same, whenever the importance and exigency of any case might require it.

40. That a Legislative Council should be established for the province of Calcutta. Our views as to the formation of such a Council have been already stated in a communication made to the Governor General in Council on the 2d of October 1829, and in a draft of the heads of a bill which we have subsequently prepared by the desire of the Government. We would only add here, that consistently with the scheme presented in our present letter, the right of legislation of the Council would be restricted to the province of Calcutta, but that it might be employed for the other territories whenever the Governor General in Council should think it expedient. We wish it also to be distinctly understood, that we should propose that the Governor General should have the right of presiding in the Legislative Council, and that nothing should be enacted, even for the province of Calcutta, without his consent; nor should we see any decisive objection against his presiding also, by appointment of the Crown, in the Council of Judicature or Court of Appeal, whichever it might be called, if it should be thought that in this way a more perfect harmony of government would be secured.

41. The first duty of the Legislative Council would be, to constitute subordinate Courts of Justice for the province of Calcutta, and until this should be done, the Supreme Court and the Country Courts must continue to exercise their respective functions. Our opinions upon this point also, of the system of Courts best adapted to India, is expressed in a paper which has already been seen by the Government, and which, at their request, is about to be submitted to them in an official form, and we would only observe here, that for the province of Calcutta we conceive that below the Court of Appeal or Council of Judicature there ought to be one Provincial

Provincial Court held at Calcutta, about four Zillah Courts; the town of Calcutta and its suburbs constituting of itself one Zillah, and an adequate number of Pergunnah Courts; that we would make all persons, without exception, eligible as Judges and officers of the Courts, but in practice, one at least of the Judges of every Zillah Court ought always to be a natural born British subject, and in the Provincial Court all the Judges should be natural born British subjects, and one of them should be an English barrister of 10 years standing. With the exception perhaps of that one person, and of all the Judges of the Court of Appeal or Council of Judicature, who ought to be appointed by the Crown, the other Judges of all the Courts within the province of Calcutta might be appointed by the Governor General in Council. The functions of these Courts, except the Provincial Court, might be confined ordinarily to civil causes, and criminal Courts for the trial of misdemeanors and of minor felonies, might be constituted by the Zillah Courts sitting at stated periods, with the addition of the Justices of the Peace; other felonies of a worse nature would be reserved for the Provincial Court alone.

42. The Governor General and Council, as at present constituted, would retain within the province of Calcutta all their present powers, as far as they should be consistent with the new provisions; and it ought to be declared much more plainly than it has hitherto been, that throughout the other territories they have the exercise by themselves, or through the Company's servants, of all authority executive, legislative and judicial, including the power of life and death, subject to the direction and control of the Court of Directors and Board of Commissioners, and to the supreme power of the Crown and the Imperial Parliament. The Governor General in Council, however, should also have the discretionary right of calling in aid the Legislative Council or Court of Appeal, and referring to them any matters arising in any part of the territories, and of appointing upon emergencies the members of these bodies, or any other persons, Commissioners to act in and for any part of the territories.

43. The basis and essential part of this plan is, that the two systems of law and sorts of Government, which it seems to be necessary to maintain in India, should respectively be confined to separate local limits, instead of struggling together within the same; but it is not meant that the system to be established around the seat of Government should be exclusively British, but one adapted to all the circumstances of the country, though in complete subordination to the Crown and Parliament. The plan would afford to all British persons, and to any other classes of the community who should set a value upon the protection of a regular system of law and Courts, the opportunity and means of living under it; on the other hand, it would secure the natives in the outer provinces from that annoyance which it is affirmed they have occasionally experienced from the process of British Courts; and it would preclude all collision between the two sets of Courts and systems of law. It would do away with all invidious distinctions between the different classes of inhabitants. In the province of Calcutta, all without distinction would have all the most important rights belonging to the inhabitants of a British settlement; in the other territories, all would be equally reduced to such as might be found consistent with the more despotic power which necessity should require to be maintained there. This need not be more despotic than at present it is, as to those who constitute ninety-nine hundredths of the whole population; on the contrary, let it be mitigated and regulated and improved as much as may be consistent with security; but let British persons who voluntarily place themselves under it, be as much subject to it, and in the same manner, as the rest of the people. Those who now, for the purposes of trade, connect themselves with the cultivation of land in the interior, might continue to do so; whilst, for those who should wish to settle for life in India, and to purchase durable interests in land, the province of Calcutta would present a sufficient area for several years to come; and all who are acquainted with the country will acknowledge the general advantage which would result from the increase in number of convenient places of residence for British persons even within that limited space. The most effectual defence against the Indian climate is, an accommodation of the place of residence to the season of the year; and it is a fact, not understood in England, that all India might be divided into circles of a radius of less than 200 miles, within each of which, in one direction or another, at every season of the year, a wholesome and a pleasant climate might be enjoyed. The limits of the province of Calcutta would not be so large as to make it an

V. Legislative Councils; Courts of Justice; Code of Laws.

unreasonable expectation, that throughout that district, in which already there is every where a permanent settlement of the Revenue, the Courts of Law and a Legislative Council together, might be able first to ascertain, and in some degree fix the nature of those customary interests in land, which are so great a difficulty in the way of making any property in it valuable or secure, and might provide some ready means of settling the disputes which will arise out of this sort of property as long as it subsists, and at the same time open some course by which, with the strictest regard to justice, and without any preference of the English to any other system of law, these inconvenient and barbarous forms of property, such as have at some time or other existed in almost every other country, might, as in other countries, be resolved into more convenient, simple and definite ones, to the advantage of all parties. We wish it to be clearly understood that it is not English law, but whatever law should be found best adapted to the country, that we should seek to establish, subject to certain specified exceptions and restrictions preservative of the sovereignty of the Crown and authority of Parliament. The task of preparing, establishing and conducting of a firm system of law within the province of Calcutta, might afford at least as much occupation to those who now find employment in the Supreme Court as they would lose by the alteration of its jurisdiction. The interests of religion, and the progress of moral instruction, would seem to us to be likely to be promoted by these arrangements; and the Legislative Council and Court of Appeal would constitute channels for the exercise of that control by the Crown and Parliament, within a certain district, over all legislation and administration of justice, which in some way or other must ultimately be established throughout the whole British territories, even though India should be made as distinct a portion of the British dominions as Ireland was before the Union, and gradually, as the system should be perfected within its limited range, it might be extended to other provinces.

44. We beg permission to guard ourselves against the appearance of being influenced in these recommendations, and particularly the latter part of them, by any feeling adverse to the East India Company. Many alterations heretofore have taken place in the constitution of the Company, and others no doubt will take place hereafter, but we do not foresee any circumstances in which it would not appear to us to be desirable that the main organ of government for India should be a body of Directors, resident in England, and elected by the holders of stock, representing property in India, and depending mainly for its value upon the prosperous condition of that country; and we regard with the greatest consideration and respect the interests of those by whom, under the Directors, India is for the most part actually and immediately governed. They and their connexions form as it were a large family, which has claims upon India founded in long expenditure upon it of all that is valuable in life; they only are qualified by information and experience to conduct the details of its affairs, and one of the principal points in all plans for the government of India ought to be the preservation of all their real interests, and the securing of their willing and cordial assistance.

45. In conclusion, we wish to say, that if our suggestions should be thought deserving of further consideration, we shall be happy to enter into more complete details of what has been stated in this letter in a very general and imperfect manner; nor are we so prejudiced in favour of the plan recommended by ourselves, that we should have any reluctance to give the fullest consideration to any other which may be thought preferable. We are strongly impressed however with the following conclusions: That the trade with India being irrevocably free, there must be a greater resort to Bengal of British persons than can be confined to Calcutta or its immediate neighbourhood; that there are not the means at present of establishing throughout the vast extent of this Presidency a system of law and government under which British persons resorting to India could or ought to be compelled to live, and that in these circumstances the wisest course will be to provide a sufficiently regular and liberal, and to a certain extent British system, for a well defined portion of the country, small indeed in proportion to the whole territories, but sufficient in reason for the ordinary and permanent abode of the families of those British persons whom the trade of India may bring to the country; to leave it to their own choice whether they will pass beyond the boundaries within which they have the opportunity of living and holding property under the protection of that system,

system, but to let them know distinctly that if they do make that choice, they leave their English rights behind them, and pass into another state of things which necessity requires to be differently managed.

We are, &c.

(True copy.)
(signed) *Holt Mackenzie,*
Secretary to Government.

— No. 27. —

LETTER from the Governor General in Council to the Hon. Sir *Charles Edward Grey*, Knight, Chief Justice, and the Hon. Sir *Edward Ryan*, Knight, Puisne Justice of the Supreme Court of Judicature at *Fort William*, in *Bengal*; suggesting for their consideration certain Alterations and Additions in the Bill to be intituled, "An Act for establishing Legislative Councils in the *East Indies*."

HON. SIRS, Fort William, 28th Sept. 1830.

WE do ourselves the honour to acknowledge the receipt of your Letter, under date the 13th instant, with its Enclosures, Nos. 1, 2, 3 and 4, and we avail ourselves of this opportunity to convey to you our acknowledgments for the obliging attention which you have shown to our suggestions.

With respect to the first mentioned document, or heads of a Bill, to be intituled "An Act for establishing Legislative Councils in the East Indies," we take the liberty of suggesting for your consideration the propriety of introducing the alterations and additions contained in the accompanying Paper. As to the form of their introduction we are indifferent, and we should indeed feel ourselves obliged by your modifying the language of our propositions, in such manner as may seem to you advisable. But we should wish that the substance of them may be preserved as much as possible. They were not resolved upon without mature deliberation, and we could not relinquish them without apprehension that the efficiency of the system of Indian government would be thereby materially impaired.

We propose to take into our consideration, at the earliest possible period, the various and important questions discussed in the other documents, numbered 2, 3 and 4, and most fully concurring with you in the sentiment you have expressed, that "upon a subject, respecting which, from its extent and intricacy, all opinions are so liable to be misunderstood, those which are stated otherwise than plainly and fully may serve for much mischief, but can scarcely do any good." We shall communicate to you, with perfect candour, the conclusions at which we may arrive, after having maturely weighed your valuable suggestions.

We have, &c.

(signed) *W. C. Bentinck.*
W. B. Bayley.
C. J. Metcalfe.

CLAUSE 4. For the words "*or in the neighbourhood, and within some convenient distance of the same at such,*" substitute "*or at such places as may be most convenient, and at such.*"

CLAUSE 6. The following addition to be made to clause 6: "Provided, however, that it shall and may be lawful for the Governor General in Council to carry on any cases in which he may consider that serious mischief to the interests of the British Government would arise from the suspension of any law, to cause the same to be carried immediately into effect, notwithstanding that the Judge or Judges may have expressed his or their belief or opinion, that such law or regulation is not within the powers vested in the Legislative Councils, by this or any subsequent Act. In all such cases, where any law or regulation may be passed on the emergency above adverted to, a written notice of the resolution to pass such law or regulation shall forthwith be transmitted by the Governor General in Council to the Judge or Judges, and such law or regulation shall thenceforward take effect and be binding, until His Majesty's pleasure be known, any repugnancy or supposed repugnancy notwithstanding; but on all such occasions the Governor General in Council will

be required to state fully and at length the grounds of the existing emergency, and without delay to submit the same, together with all the documents that may have been recorded on the subject, through the usual channel, for the consideration of His Majesty in Council."

CLAUSE 9. The following rules to be substituted for clause 9: "When any law or regulation shall have been resolved upon at any lawful meeting of the said Legislative Councils, and have been sent round to the resident Members for the expression of their approbation or dissent in writing; then, if the Governor General or the Governors of Fort St. George and Bombay shall think fit, they shall be competent at this stage to correct the further progress of the proposed law or regulation. If, however, the said Governor General or Governors of Fort St. George and Bombay respectively shall approve the further progress of such proposed law or regulation, notice of the general object of it shall forthwith be published in the Government Gazette, or some other newspaper of the place, and an interval of 14 days at the least shall take place, from the time of the first publication, before the Governor General shall give his final consent (excepting any case in which the Governor General in Council may be of opinion that serious mischief to the interests of the British nation would arise from the said delay of 14 days, in which case the circumstances being duly specified and recorded, the law or regulation may be passed on the emergency), and if any person or persons interested in or affected by any such law or regulation, shall petition any such Council to take into consideration his or their objections against it, at any time before the consent in writing of the Governor General of Fort William for the establishment of such law or regulation shall have been given, the Governor General or Governor or Vice President of the Presidency at which the law or regulation shall have been made, shall direct at what time and place any such person or persons shall state his or their objections, and whether by written petition only, or by counsel, or in person; and it shall be lawful for any person or persons who may be aggrieved by any such law or regulation to appeal against the same to His Majesty the King in Council, who shall have full power and authority at any time to repeal the same, but such appeal or notice thereof shall be made or given within six calendar months of the publication in India of the law or regulation which shall be the subject of appeal; provided moreover, that whenever the Governors of Madras or Bombay respectively shall object to and stop the progress of a proposed law or regulation, he shall, at the request of any Member of the Legislative Council, lay before such Council a statement of the grounds of his objections; and any Member disapproving of such grounds, may enter upon the Minutes the grounds of his disapprobation; and in all such cases of difference of opinion, the whole of the documents connected with the subject shall be submitted for the consideration and decision of the Governor General, to whom it shall be competent to confirm the rejection of the proposed law, or to lay the same before the Supreme Legislative Council, to be dealt with as if such law or regulation had been approved at the subordinate Presidency, and had been transmitted in due course to the Supreme Council for confirmation. In like manner, whenever the Governor General may object to and arrest the progress of a proposed law or regulation, which may have been resolved upon in the first instance by the Supreme Legislative Council, he shall, at the request of any Member of such Legislative Council, lay before it a statement of the grounds of his objections, and any Member disapproving of such grounds may enter upon the Minutes the grounds of his disapprobation; and in all such cases of difference of opinion, the whole of the documents connected with the subject shall be submitted for the consideration and decision of His Majesty in Council, which authority shall pass such orders as it may see fit, either for the final rejection or for the adoption of the proposed law or regulation.

"Provided also, that nothing contained in this Act shall be construed to limit or restrict the powers now legally exercised by the Governor General in Council of the Presidency of Fort William, or of the Governor in Council of the Presidencies of Fort St. George and Bombay respectively, excepting in so far as the same may relate to the making of laws and regulations."

(True copies.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

— No. 28. —

(No. 1246.)

LETTER from the Governor General in Council to the Hon. Sir *Charles E. Grey*, Knight, Chief Justice and the Hon. Sir *Edward Ryan*, Knight, Puisne Justice, of the Supreme Court of Judicature at Fort William in Bengal; communicating the sentiments of his Lordship in Council, on the Papers submitted by them relative to the formation of a Code of Laws and the establishment of a System of Courts for the *British* Territories in the *East Indies*.

1. WE have already had the honour of communicating to you our sentiments on the draft of a Bill, &c. which accompanied your Letter of the 13th ultimo.

2. We now proceed to state what has occurred to us on a consideration of the other important and valuable Papers with which you have favoured us; and first, as to the observations relative to the formation of a code of laws for the British territories in the East Indies.

3. You have justly stated the confusion which exists under the law as it now stands, in regard to the rights of various classes of persons, and on this branch of the subject we have little or nothing to add to the exposition contained in your Letter to the Secretary to the Board of Control, of the circumstances which have chiefly occasioned the difficulties and embarrassments under which all authorities engaged in the civil administration of the country equally labour. Whether, indeed, the principles ordinarily applicable to conquests by the Crown, could have been fitly applied to provinces of so vast an extent, acquired under circumstances of a very peculiar nature, partly by arms, partly by negociation, and partly by arrangements for which it might not be easy to find a suitable designation among the stated terms of European jurists, seems to us to be very questionable; but whatever principle had been followed, we imagine that it must equally have been found impossible for the British Parliament to legislate for the details of the civil administration of this country, without occasioning innumerable doubts and difficulties at every step. On all sides therefore it must, we think, be manifest that the chaos which you have so forcibly and justly described, can only be reduced into order by means of a local legislature, acting of course under a complete subordination to the Parliament of England. And it seems to us to be not less evident, that the legislative interposition of Parliament ought to be confined, as far as possible, to matters affecting the general concerns of the empire; and that in respect to local details, even when it may see reason to interfere, it should proceed rather by general resolutions, to be reduced into law by the local legislature, with a full knowledge of local peculiarities, than by formal enactments binding to the letter.

4. With reference to your remarks as to the second branch of law, or the law of property, we are sorry that we cannot bring ourselves to concur in the opinion you have expressed. You suggest that one law should be established for all moveable property (as well as for matters of contract) to whatever class of persons belonging, and that the laws to be established should be the law of England. The only advantage you appear to anticipate from this is, the advantage of uniformity. In matters of contract it may be observed, that the principles of equity and good sense are enjoined; not those alone of the Hindoo and Mahomedan laws. On the proposition of introducing a new law, as relates to moveable property, we are of opinion that the innovation would be at once unwelcome and unnecessary. The rules of inheritance, both Hindoo and Mahomedan, by which much moveable property changes owners, are clear, simple and well defined; and the few points on which conflicting doctrines are entertained, might easily be set at rest by a declaratory enactment; cases unprovided for, or rules manifestly repugnant to justice and sound policy (if such exist), may similarly be provided for as they may occur. But any general enactment, which should sweep away at one stroke the laws of our Hindoo and Moslem subjects relative to moveable property, would, we apprehend, be the occasion of much complaint; and, as already observed, we are not aware of any evil practically experienced under the present law to call for any violent remedy. Generally, indeed, in making a code, our object would be rather to declare what

V. Legislative Councils; Courts of Justice; Code of Laws.

the law is, than to change what is fully established, or to attempt to provide prospectively for future exigencies, unless with the view of supplying obvious defects, or of correcting evils actually experienced.

5. With these sentiments we should think it advisable to leave untouched the law relative to real property, excepting in the case of British born subjects. Considering the purposes for which these generally acquire, and are likely to acquire such property, and the expediency of avoiding all artificial obstacles to its free transfer, it seems to us that it would be convenient and advantageous, if the estates of that class were declared to be a chattel interest merely; some simple rules relative to registry and transfer, and some clear definition of the modes in which such property should pass and be required, being at the same time established. With this modification, we conceive that the English law of property, subject of course to modification from time to time by the local legislature, might be advantageously made applicable to all Christian persons. It is unnecessary now to advert particularly to the rules which may become necessary to provide for the case of persons passing from one class to another. Possibly no provision may be required in addition to that above suggested, for the application of English law to all Christian persons.

6. But some new rules relative to the execution of wills, and the administration of the estates of intestates, appear to be very urgently required, and in regard to Christian persons, the whole scheme of ecclesiastical law must be distinctly considered.

7. No objection occurs to us against the extension, as proposed by you, of the English law relating to private injuries. Already, indeed, our Courts are mainly guided by the principles of that law, and the only change needed seems to be better and fuller definitions, and such an amendment in the forms of action and process as, while it preserves to the utmost extent practicable, the simplicity that distinguishes our existing rules in this respect may better accommodate them to the various exigencies for which Courts of Law and Equity have to provide.

8. We have great satisfaction in expressing our entire concurrence in the concluding observation of the Paper now referred to, as to that branch of the law which relates to public wrongs. We are satisfied that a penal code such as you describe, might without difficulty be prepared; but even in this matter we are equally convinced of the advantage of a local council over a distant legislature, to which many things, very important to be considered in adjusting the scale and determining the nature of punishments, cannot be familiarly present.

9. We have now to advert to a very important question, on which we regret to find ourselves compelled to dissent from the views which you entertain. We mean the separation of a certain tract of country for the introduction of a new code and judiciary system. Against this arrangement, many and grave objections occur to us.

10. The principle on which the suggestion is founded appears to require that, as proposed by you, an inconsiderable portion only of the territories subordinate to this Presidency, should be included within the tract to be set apart for special laws and a peculiar system of administration. And howsoever therefore the limits might be adjusted, the same, or nearly similar results must we apprehend, follow, as are to be anticipated on the supposition that your recommendation for confining it to the Delta of the Ganges, were adopted. Now, what would be the position in which we should then place the government of the country? The districts in question (supposing that to the west Moorshedabad, and eastward Decca Jelalpore, were wholly included) may probably yield about a moiety of one of the great staples of the country, indigo. Their population * may be estimated at about 5,000,000, and the European residents (exclusive of Calcutta), are stated in the latest Report of the Superintendent of Police at 160 only. Unquestionably it is an object of no ordinary importance to provide good laws, and an establishment that would well administer justice for so numerous a people. But we should greatly lament to see that object pursued in any manner that would indicate, or afford the slightest ground for the insinuation, that the remaining vast, populous and wealthy provinces subordinate

* Moorshedabad	763,000
Nuddea	1,187,000
24 Pergannahs, Suburbs and City	1,225,000 (a)
Jessore	1,184,000
Dacca Jelalpore	588,000
	4,947,000

(a) The Christian population of Calcutta was rated in the Census of 1822 at 13,183.

to

to this Presidency, many of which we have now possessed for about 70 years, were wilfully and deliberately to be left subject, for an indefinite period, to a scheme of laws and judiciary system which it would be thought unjust to apply to a comparatively inconsiderable body of our countrymen. It would be repugnant to our feelings, it could scarcely fail to shock the public sentiment, to pronounce such a sentence of virtual outlawry on the great majority of our native subjects even for a single day, and if the general system prevailing in the interior of the country were of that defective character which the proposed measure would indicate, it is the obvious and bounden duty of our Government to proceed forthwith to the work of reform, and to avoid carefully every measure that might tend to raise artificial obstacles to its progress.

11. The neighbouring districts of Beerbhoom, Jungle Mehals, Burdwan, Hooghly and Midnapore are stated to contain a considerably larger population than the tract you have indicated. If we exclude the city of Calcutta and the suburbs, they will be found, we believe, to possess a larger mass of wealth, and to present a greater value of property for adjudication in the Courts. In all of them there are several European residents. They present opportunities for the successful application of European skill that are not to be found within the Delta of the Ganges, possessing valuable coal mines, abounding in iron ore, and producing a very large supply of sugar, of which little or nothing is produced within the districts of the Delta. Probably, indeed, it was not your intention strictly to adhere to the line of demarcation specified, since not to mention the collieries of Burdwan, the property of British born subjects, it would exclude the populous suburbs on the opposite side of the river, and the very important establishment at Fort Gloucester, and several zemindarees and indigo concerns will, we believe, be found to extend to both sides of the Great River and of the Bhageruttee. But, as already observed, whatever limits we take, consistently with the principle on which the scheme must be made to rest, equal difficulties pursue us. They would not indeed be obviated by including in the scheme the entire province of Bengal. The obligation of providing for the pure and prompt administration of good laws is not less urgent and indispensable in the provinces of Behar and Benares than in the immediate vicinity of Calcutta. Each of those provinces contain a very large population, with a greater share of wealth, intelligence and spirit than is to be found in the Lower Provinces beyond the limits of the city and its suburbs. They are not less entitled to the benefit of equal laws well administered, than any other portion of our subjects, they are probably more capable of appreciating good government. They are certainly much more likely to resent misgovernment than the people of Bengal. There would therefore

	Population.
Beerbhoom	1,267,000
Jungle Mehals	1,305,000
Burdwan	1,188,000
Hooghly	1,239,000
Midnapore	1,914,000
	6,913,000

	Property at Stake in the Zillah and Subordinate Courts, 31 Dec. 1828.	Property adjudged by the Zillah and Subordinate Courts.
Moorshedabad	549,000	224,000
Nuddea	383,000	147,000
24 Pergunnahs and Suburbs	572,000	274,000
Jessore	579,000	117,000
Dacca Jelalpore	165,000	74,000
Total	2,248,000	836,000
Beerbhoom	250,000	124,000
Jungle Mehals	577,000	214,000
Burdwan	499,000	247,000
Hooghly	392,000	345,000
Midnapore	436,000	127,000
Total	2,154,000	1,057,000

	Estimated Population.	Property at Stake in the Zillah Courts, 1828.	Property adjudged, &c. 1828.
ZILLAHS OF BEHAR:			
Sarun	1,464,000	544,000	178,000
Shahabad	909,000	571,000	74,000
Patna	256,000	532,000	225,000
Behar, exclusive of Ramghur	1,341,000	947,000	138,000
Terhoot	1,698,000	1,307,000	354,000
Total	5,668,000	3,901,000	969,000
ZILLAHS OF BENARES:			
Benares	500,000	529,000	449,000
Ghazeepore	3,170,000	468,000	251,000
Juanpore		467,000	147,000
Mirzapore		383,000	203,000
Goruckpore	1,989,000	820,000	190,000
Total	5,659,000	2,667,000	1,240,000

COMPARATIVE STATEMENT of Amount adjudged in the Provincial Courts of Calcutta, Moorshedabad, and in those of Behar and Benares.

—	1826.	1827.	1828.
Calcutta Provincial Court -	2,074,000	831,000	485,000
Moorshedabad Ditto - -	544,000	671,000	1,022,000
Total - - -	2,618,000	1,502,000	1,507,000
Patna Provincial Court -	1,034,000	3,247,000	778,000
Benares - - Ditto - -	5,602,000	1,499,000	2,095,000
Total - - -	6,636,000	4,746,000	2,873,000

COMPARATIVE STATEMENT of Amount at Stake in the Suits pending in the above-mentioned Courts.

—	1826.	1827.	1828.
Calcutta - - - - -	8,104,000	6,598,000	8,217,000
Moorshedabad - - -	10,122,000	10,302,000	9,902,000
Total - - -	18,226,000	16,900,000	18,119,000
Patna - - - -	7,015,000	5,016,000	5,389,000
Benares - - - -	45,082,000	43,653,000	42,897,000
Total - - -	52,097,000	48,669,000	48,286,000

fore be something extremely objectionable, we conceive, in an act which would virtually proclaim to the people of those provinces that measures for the reform of the judicial administration, on which their property and happiness depends, were to be postponed until a special scheme should be fashioned and matured for a comparatively confined tract and limited population around the Presidency of Fort William.

12. Even, therefore, if we looked to the natives alone, who are likely, in the progress of education, to acquire every day a greater community of sentiment with their rulers, and many of whom, you are doubtless aware, possess properties in various districts, we should be averse to any plan of arbitrary distinction between the different parts of our dominions, as likely to occasion embarrassment and discontent, our real policy being, we conceive, gradually to extend to the whole country, with the modifications required by local circumstances, whatever institutions are found most consonant with our position, and with the wants and wishes of the people. Still more does such a policy appear to be required by a consideration of the actual circumstances in which British residents are now placed, and of those which must, we apprehend, be anticipated on their being permitted more freely to resort to this country.

13. Nor are there fewer objections to the scheme of separation, if we regard it in what may be termed its commercial relations.

14. Much indigo is produced in the more distant parts of Bengal, still more in the provinces of Behar and Benares, where European residents are consequently as numerous nearly as in the districts adjoining Calcutta. The culture of cotton, sugar and tobacco, and the growth of the mulberry for the manufacture of silk, chiefly prevails (the three first-mentioned articles more especially) in the remoter districts. Saltpetre, and various dyes and drugs are all unknown to those adjoining the Presidency; and both to the east and west, it is beyond any limits, we imagine, compatible with your scheme that unoccupied land is to be found, in considerable quantity, available for the settlement of European adventurers, with the exception of the Sunderbunds. It would therefore, we imagine, be deemed altogether unreasonable to adopt a plan founded on the assumption that the resort of British settlers should be confined within a few districts surrounding the Presidency, or that there only they would find a scheme of law and judiciary establishments calculated to protect or control them, otherwise than in the spirit of a military despotism. Such a restriction upon their enterprize would never surely be tolerated. Such an avowal of incompetency, however misplaced, must be fatal to the Government that made it. We cannot, however, deem any restriction necessary; and with every readiness to admit the imperfection of our institutions, (where are laws and courts not imperfect?) we see no reason to conclude that they may not, without any arbitrary separation of the different parts of the empire, be so improved by a plan of steady and gradual reform, as to afford in every part of the country (excepting, of course, certain poor and wild tracts which are inhabited by uncivilized races) a security for person and property not less perfect than is enjoyed in any of the foreign dominions of the British Crown.

15. We do not of course, in regard to arrangements, the success of which must mainly depend on the fitness of the instruments employed, by any means object to the principle of giving effect to them only as duly qualified agents can be found. But

Bnt in advocating a gradual reform, we would be understood to refer rather to the nature of the changes to be made than to the local limits to which they apply. A sudden and great change of rights, interests or institutions would be mischievous, though restricted to a single Pergunnah. The progress of improvement will beneficially proceed, with well measured steps, throughout the whole of British India. It is therefore against the adoption of a rule by which we shall arbitrarily prevent ourselves from adopting our course of proceedings to actual circumstances, we would be understood to argue; and we confess we do not anticipate from the free permission to Europeans to settle in the interior, with the liberty of purchasing lands, any such consequences as should deter us from adopting one general scheme of administration for the whole of the provinces. We do not think it likely that the number of persons embarking in the speculation will be numerous. We should not anticipate from their presence any occasions of dispute which a tolerably good judiciary establishment would not be fully competent to settle; nay, we should look rather for increased facilities for getting at the facts, the ascertainment of which now constitutes our main difficulty, since none of them would have that timid jealousy, and the worst of them are not likely to have, in equal degree, the spirit of chicane, which unfortunately distinguish all classes of our native subjects, and which frequently leads to the concealment of the truth, even when its discovery would be beneficial to the party. The conditions on which land is held are indeed various; but there is not generally any seriously embarrassing entanglement of properties when the real circumstances are developed. All undefined *classes* which resembled the *incidents* of the *feudal* tenures have long since been done away; and in so far as concerns the security of private rights and their ready adjustment, what is wanted is not, in our judgment, a change of tenure, but the simple discovery and record of what already exists.

16. We hold it to be impracticable to compel British subjects to congregate within a very limited space, consistently with the objects for which we desire to see them admitted to the free possession of landed property; for land is not generally to be obtained, excepting at a very high price. In prosecuting their schemes of improvement, they must seek a variety of soils and climate. They cannot, we apprehend, expect to be able to compete succesfully with the natives in the production of the ordinary articles of agriculture; and for success in any pursuit, they must diligently avail themselves of every attainable advantage in the way of low wages and unimproved capabilities, which must gradually disappear with the spread of knowledge; in a word, looking to all the circumstances of the country, it seems to us, that Europeans must cease to find any large profit in agricultural adventure, when they cease to be the instructors of the people; and seeing how rapidly the latter appear to be capable of acquiring European knowledge, the former must, from that circumstance alone, be few in number. It is very unlikely they should wish to retain landed property in India, if it did not yield them a profit much exceeding the mere interest which they could derive at home from the money value of it.

17. With the above sentiments on the plan of separating a certain tract of country for the introduction of a new code and a modified judiciary system, it is satisfactory to us to find, that amongst those valuable and important suggestions contained in the Papers 2 and 3, relative to the formation of a code and the establishment of Courts, which command our concurrence, there are none that might not, in our judgment, be applied with equal facility to the country generally as to a single province; and that the objections which occur to us against the other measures you have proposed, have no reference to the extent of the sphere within which they may be called into operation.

18. We cordially unite with you in opinion, that all the Indian territories which constitute the three Presidencies, should be considered and declared to be dominions of the Crown of the United Kingdom, for which Parliament has an unquestionable right of legislation. We likewise entirely assent to your suggestion, that as soon as possible, one code of law should be established for all persons and all places within the same, reserving of course the special laws and usages which depend upon the religious creed of the different classes of our subjects, and that there should be one system of Courts, of which the highest should be filled by Judges appointed by His Majesty. We cannot regard the commercial concerns of the Company as

V. Legislative Councils; Courts of Justice; Code of Laws

opposing any serious obstacle to the adoption of any scheme that may otherwise be thought expedient. We consider it in the highest degree desirable, that every thing which can tend to separate in reality, or in the estimation of the community, the Government of the King from that of the Company, in so far as concerns the political administration of this country, should be discontinued; and if any part of the system according to which the Company's commercial affairs are now managed, has this tendency, we doubt not that it will be corrected. On that score, therefore, we do not anticipate any difficulty in adopting whatever system of judiciary establishments may appear to be best suited to the circumstances of the country, and the scheme of which you have given a general outline in the paper, No. 3, agreeing nearly with what we should ourselves wish to see established, it does not appear to be necessary that we should trouble you with any remarks, excepting on a few points.

STATEMENT of CRIMINAL BUSINESS in the several Courts belonging to the Presidency of Fort William, for the Years 1827 and 1828.

	Western Provinces.		Lower Provinces.	
	1827.	1828.	1827.	1828.
Magistrate's Courts:				
Persons apprehended, &c. - - -	39,335	32,077	69,511	70,189
— punished -	15,655	12,439	24,748	25,660
— acquitted -	20,831	17,217	42,193	42,591
— committed -	2,749	2,693	2,570	1,986
Courts of Circuit:	1826.	1827.	1826.	1827.
Persons convicted -	1,197	1,320	973	1,576
— acquitted -	894	913	871	1,185
Nizamut Adawlut:				
Persons acquitted -	93	165	129	95
— convicted -	453	279	425	283
Sentences of death -	39	31	22	23
Ditto - of transportation - -	34	4	9	39
Ditto - of imprisonment - - -	380	244	394	221

19. First, as to the actual state of things, the annexed Memorandum will give you a general conception of the business of the several descriptions of Courts, Civil and Criminal, now established for the administration of justice in the interior of the country.

20. You will thence observe that the Native Judges already dispose of about 15-17ths of the regular civil suits (original and appeal) tried and determined throughout the country, and that it is chiefly in the Superior Courts that the suits in arrear are of long standing. Of the original suits pending before the Judges and Registers, a large proportion will be found to relate to things of a value under 1,000 rupees; and although, therefore, the jurisdiction of the Native Judges were still restricted to that sum, the Zillah Judges might be greatly relieved by a different distribution of the business; in so much that if they were at the same time freed from their magisterial duties, we have little doubt that, with occasional aid in particular districts, they would be able promptly to decide all the cases requiring their decision; and thus to obviate any reasonable ground of complaint on the score of delay, excepting what may arise from defects of process, susceptible, we conceive of easy amendment.

STATEMENT of Regular CIVIL SUITS in the several Courts belonging to the Presidency of Fort William, for the Years 1827–28.

	Instituted.		Disposed of.		Pending.	
	1827.	1828.	1827.	1828.	1828.	1829.
Sudder Dewanny -	139	171	118	148	469	492
Provincial Courts -	1,359	1,429	1,415	1,236	3,854	4,006
Zilla Judges - -	63,350	60,400	9,681	8,989	27,856	27,233
Registers - - -	Included in the above - -		6,022	4,427	10,392	10,802
Sudder Aumeens -			45,986	44,784	35,036	36,294
Moonsiffs - - -	115,797	113,849	113,120	114,360	60,885	61,317
Total - -	180,645	175,849	176,342	173,944	138,492	140,144

21. We are disposed to doubt whether natives could advantageously be associated with the European officers, as Judges in the Zillah Courts. Men of admirable acuteness and talent we certainly could command; and in a few years, probably, the prospect of honour and liberal emolument would produce an abundant supply of any species of knowledge, for the acquirement of which means may be afforded. But

But moral character depends not less on the general sentiment of the community than on the workings of the individual mind; and its improvement, however ultimately sure to follow, will not necessarily keep pace with the progress of knowledge. Independently, therefore, of considerations resting on the peculiarity of our position in this country, it seems to us that, for a considerable time to come at least, the natives must be kept distinctly in subordination to the European Zillah Judges, though they, as well as other native persons, may probably be rendered very useful in the capacity of assessors or jurors; and we are not prepared to say, that they ought not eventually to be vested generally with the primary jurisdiction of all civil suits. We are likewise doubtful how far it would be expedient to have any tribunal interposed between the Zillah Courts and the Court of Final Jurisdiction in this country. The expense of such an establishment would be great; its utility is questionable; for the Provincial Judges must apparently be so numerous as to make it doubtful whether we could generally obtain for the office the services of men better qualified than the Zillah Judges may reasonably be expected to be; and if they were not superior, then there would be no sufficient reason why they should have higher powers than the Zillah Judges; nay, to give them any power of ultimate decision that would exclude the higher Court, would be mischievous, and their interposition must, in any event, operate to lower the Zillah Courts, and to debar them from many of the advantages they would derive from being brought into immediate contact with the highest local Court. On general grounds, indeed, it seems to us to be desirable to restrict, within narrow limits, the appeals of right from one British Judge to another, litigation and the frivolous prosecution of their suits being prevalent vices, and the proper function of all British authorities being direction and control, to be exercised with the least possible appearance of disunion among those who, in their different ranks, administer the affairs of India as the representatives of the British Government. It seems to us, consequently, that the Presidency Courts of Appeal should be placed immediately above the Zillah Courts. How many Presidency Courts should be instituted is a separate question, the determination of which must, in a great measure, depend on the decision that may be passed in regard to the distribution of the political and executive authority of the Government. But whether there be three or four, or any other number of Presidencies and Presidency Courts, it will, we conceive, be desirable that the Court at Calcutta, or some chamber thereof, should have ordinary jurisdiction in certain cases, of the nature of those specified in the 2d paragraph of your Paper; and it should further exercise, in the capacity of a Supreme Appellate Tribunal, such special powers of correction and control as may be necessary to maintain consistency of decision throughout the whole of British India.

22. In the criminal department it will not, we imagine, be difficult to contrive a system of jury-trial for all cases which it may appear desirable to have so tried; and if our Zillah Judges were wholly freed from their magisterial functions, we do not think that there would remain any reasonable ground of objection against their having primary cognizance of all cases, whether British born subjects or natives were concerned, subject to the directions of the Presidency Court, to which, of course, certain cases might be required to be referred before execution.

23. Arrangements might, we imagine, without difficulty be made to secure all the advantages of Circuits, without the inconvenient delay incident to the plan of Sessions, held at distant periods. But in the present stage of the business it is not perhaps necessary to go further into detail. Whatever plan be adopted, it seems to be clear that it can be successfully carried into effect only by means of a Legislative Council in this country, empowered to enact laws for all persons and all places within British India; since, in the application of the best devised system, there must arise a multitude of laws that no human foresight can anticipate: and were the British Parliament to undertake the task of constructing a system by enactments emanating directly from itself, no one can reasonably doubt that the result must be the accumulation of doubts and difficulties that would most mischievously interfere with the good government of the country.

24. In the above remarks we have used, with entire frankness, the freedom of discussion you have invited, satisfied that such a course of proceeding is due to the great national interests involved in the questions at issue, and that we thus best

V. Legislative Councils; Courts of Justice; Code of Laws.

evince the high importance we attach to the suggestions with which you have so obligingly favoured us.

We have, &c.

(signed) *W. C. Bentinck.*
W. B. Bayley.
C. T. Metcalfe.

Fort William, 9th October 1831.

(True Copy.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

—No. 29.—

LETTER from the Judges of the Supreme Court to the Governor General in Council, in reply to Letter of the 28th September; stating their sentiments on the Additions and Alterations proposed in the Bill.

Garden Reach, 7th October 1830.

RIGHT HON. LORD AND HON. SIRS,

WE have had the honour of receiving your letter of the 28th ultimo.

One of the proposed alterations appears to us to be unnecessary, and in some degree objectionable. It is that which upon any emergency would give to the Governor General the power of passing any law resolved upon at any meeting of three Members of the Council, without allowing the interval of fourteen days to elapse. We understand that this was suggested by a provision in the statute 9 Geo. IV. c. 83, s. 25, respecting the Legislative Council of New South Wales: but it will be found upon examination that the power there given is only that of dispensing with an eight days notice *before* the law is resolved upon in Council, and such a dispensing power is unnecessary in the case now before us, because it is not proposed that any such previous notice should be given. To authorize the Governor General to dispense with the *subsequent* interval of fourteen days, would produce great confusion; for he might then pass a law, without knowing that it would be thought objectionable, which might afterwards be declared, not only by the Judges, but by a majority of the whole Council, to be disapproved of by them, or even to be thought absolutely unlawful.

The other alterations proposed by you have been introduced by us into the amended Minutes of a Bill which accompany this letter. To make them consist with the other parts, it has been necessary to alter the arrangement of several of the clauses, but we believe the whole will be found now to correspond with your views, and to establish the following course for the passing of a law at this Presidency: viz. That it shall be proposed in a meeting of at least three Members of the Legislative Council, if resolved upon, that it shall then be sent to the Governor General, who may either quash it or send it round to all the Members of the Council then resident in any part of the Presidency: all those Members must express in writing their assent or dissent: if a majority of the whole express dissent, the regulation falls to the ground; if the majority assents, it is established as law, unless the Judges declare it to be unlawful, in which case it is suspended, unless the Governor General takes upon himself to give it a temporary effect until the pleasure of the King in Council can be declared.

There are some inconveniences which may arise out of the alteration which you have required to be introduced, by which an unlimited discretion is left to the Governor General as to the place of assembling the Council. The Judges of the Supreme Court, whilst the Court is fixed at Calcutta, could scarcely attend the Council elsewhere, and yet their presence, according to the present form of these Minutes, is rendered necessary.

If this circumstance or any other should appear to call for a modification of the Minutes as they are now framed, it has occurred to us, and we submit it for your consideration, that if the Supreme Court should be made principally a Court of Appeal, it might be a convenient arrangement that two persons appointed by the Crown,

Crown, together with one Member of the existing Council and the Governor General, should form a Legislative Council, and two other persons, appointed by the Crown, together with the other Member of Council and the Governor General, should form the Court of Appeal or Council of Judicature; the presence of the Governor General not being made necessary, but the right only of presiding in each Council being reserved to him when it should be thought expedient to exercise it.

We are, &c.

(signed) *Chas. Edwd. Grey.*
Edward Ryan.

(A true copy.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

— No. 30. —

LETTER to the Hon. Sir *Charles Edward Grey*, Knight, Chief Justice, and the Hon. Sir *Edward Ryan*, Knight, Puisne Justice of the Supreme Court of Judicature at *Fort William* in *Bengal*; explaining more clearly the views of his Lordship in Council, in suggesting an Alteration commented upon in the Letter of the 7th October 1830.

HON. SIRS, 11th October 1830.

WE do ourselves the honour to acknowledge the receipt of your letter, dated the 7th instant, with the amended Bill which accompanied it.

2. With respect to the alteration which we suggested, and which appears to you unnecessary, and in some degree objectionable, we regret that we should not have expressed ourselves with sufficient clearness and precision. Our object was that the Governor General should be empowered to dispense with publication, in cases of emergency, after the proposed law had been sent round to all the resident Members of the Legislative Council. This explanation will, we trust, do away with the objection which you attached to the suggested alteration; but with the view of removing all ambiguity, we have put it into another shape. A copy of the rule as now altered is annexed, and we would suggest that the substance of it be introduced at the end of the 9th section, or at such other part of the proposed Act as you may consider more suitable.

3. You will observe, that in addition to the power of dispensing with publication, we now propose that a power should be lodged with the Governor General, in extraordinary cases, of obviating the delay which would arise from sending round a law to all the resident Members of the Council. We conceive this power to be necessary to meet cases of emergency; and as each Member of the Council would receive due notice, and have the option of attending the meeting, we are not aware that the proposition to confer it, limited as it will be to cases of great emergency and to laws of a short duration, can be considered in any degree objectionable.

4. We venture to suggest to you an alteration of the period specified in the 6th section, from 12 to 18 calendar months, this last-mentioned period appearing to us no more than sufficient for the notification of the pleasure of His Majesty in Council respecting any law or regulation passed in this country, adverting to the ordinary length of time occupied in the voyage to and from England, and to the interval which must be allowed for the deliberation of the home authorities.

5. On the subject of the inconveniences which you anticipate as being likely to arise from leaving to the Governor General an unlimited discretion as to the place of assembling the Council, we have only to remark, that we never intended that this discretion should be exercised except in cases of urgent and manifest necessity. Epidemic diseases may arise which would render it unsafe to reside at the Presidency or in its vicinity; the contingencies of war may render the removal of the seat of Government expedient and necessary; and various exigencies, now unforeseen and not easily enumerated, may occur to make the exercise of such a power

V. Legislative Councils; Courts of Justice; Code of Laws.

indispensable; and it ought, of course, to be competent to the Legislative Council to meet such contingencies by an alteration in the seat of the Supreme Court.

6. Under the extreme improbability of such an emergency arising as that adverted to in the preceding paragraph, we conceive that it would be obviously premature to discuss at length the questions involved in the proposition contained in the concluding paragraph of your letter, which we are of opinion will with more propriety be left for the consideration of the Legislative Council, after sufficient experience has been had of the operation of the proposed system.

We have, &c.

(signed) *W. C. Bentinck.*
W. B. Bayley.
C. T. Metcalfe.

PROPOSED AMENDED RULE adverted to in Paragraph 2, of the Letter under date the 11th instant.

PROVIDED, however, that in any case in which, in the judgment of the Governor General, the safety and tranquillity of the British possessions in India, or the public interest essentially require that any law should be finally passed by the Legislative Council, holding a meeting as aforesaid, without the delay that would attend the reference of the draft to all the resident Members of that Council, or without publication, it shall be lawful for the Governor General to approve and confirm the law immediately after its being resolved on and passed as aforesaid. But, in all such cases, the Governor General shall, in summoning the Council, cause notice to be given to each and every one of the Members resident at the Presidency or place at which the Council is held, that it is his opinion that the law should be passed on emergency. Such law, however so passed on emergency, shall have effect for the period of 12 months only, or until the pleasure of His Majesty in Council respecting the same, before the expiration of the said 12 months, shall be declared. And in every such case the Governor General shall state in writing the grounds and reasons of such emergency, and shall enter the same upon the proceedings of the Legislative Council, by which the law or regulation shall have been prepared, and the same Council shall forthwith transmit copies of the law or regulation and all the proceedings connected therewith to the Board of Commissioners and Court of Directors, in manner hereinbefore provided, in order that the pleasure of His Majesty in Council may be declared thereon.

(True copies.)
(signed) *Holt Mackenzie,*
Secretary to the Government.

—No. 31.—

LETTER from the Judges of the Supreme Court to the Governor General in Council; returning AMENDED MINUTES of a BILL, for establishing LEGISLATIVE COUNCILS in the *East Indies.*

Garden Reach, 13th October 1830.

RIGHT HON. LORDS AND HON. SIRS,

WE have had the honour of receiving your letter, dated the 11th instant, with the amended Minutes of a Bill, and the draft of a further amendment proposed to be made therein.

We have gone through the amended Minutes, and have introduced such alterations as we trust have made them now entirely correspond with your views; and we enclose a fresh copy of the Minutes, with all these further alterations inserted in red ink*. There are a few which are mere corrections of inaccuracies or omissions in the former copies.

The only point in which the Minutes now differ from your last suggestion, is the opportunity which is reserved (even upon urgent occasions) to all the Members of the Legislative Council, who are resident upon the spot, of seeing and approving

* The red ink alterations are printed in italics.

approving or disapproving of any proposed law; but, in such cases, the power is secured to the Governor General of establishing the law, at all events, on the next day but one after it has been agreed upon in any meeting of the Legislative Council. So short a delay in the making of a law cannot in any case be productive of inconvenience; and if you should think it desirable, we should have no objection to its being directed that the written disapprobation by any Member of any Legislative Council of any proposed law or regulation shall be kept secret, both before and after any such law or regulation shall be established, except that it shall be communicated to the proper authorities in the United Kingdom, and to all the Members of the Legislative Council, and shall be entered upon the proceedings thereof.

We have the honour to remain, Right honourable Lords and Honourable Sirs,
Your obedient humble Servants,

(signed) *Chas. Edwd. Grey.*
Edwd. Ryan.

(True copy.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

HEADS of a BILL, to be intituled, "An Act for establishing Legislative Councils in the *East Indies*."

1. WHEREAS the Civil and Military Government of the Presidencies of Fort William, Fort St. George and Bombay, in the East Indies, subject to such superintendence, direction, control and restrictions as for that purpose have been provided and established, is entrusted to the Governor General in Council for the time being, and the Governors in Council of the said Presidencies; and also the ordering, management and government of all the territorial acquisitions and revenues therein: And whereas such Governor General in Council, and Governors in Council, have been authorized and empowered, by several Acts of Parliament, to make rules, ordinances, regulations and laws, as well for the imposition of duties and taxes as for divers other purposes; and it hath been enacted, that all regulations affecting the rights, persons or property of the natives, or of any other individuals who may be answerable to the Provincial Courts of Justice, shall be registered in the judicial department, and formed into a regular code; and it hath also been provided that the rules, ordinances and regulations made for the settlements of Fort William, Fort St. George and Bombay, and the factories and places subordinate thereto shall be registered in the Supreme Courts of Judicature at the said settlements, with the consent and approbation of the said Courts; and further provisions have been made for the better enabling of his Majesty in Council, in some cases, to disallow or repeal, and in others, to amend such rules, ordinances or laws: And whereas it is necessary that a power should at all times be vested in some persons resident within the British territories in the East Indies, of making regulations and laws for all the territories and people there under British Government: And whereas the several Acts of Parliament which have heretofore been passed for that purpose have been found to be in some respects imperfect and inconvenient, and it is expedient that more full, certain and effectual provisions should be established instead of them; be it therefore enacted, that so much of an Act, intituled, &c.

13 Geo. III. c. 63. ss. 36, 37.
21 Geo. III. c. 70, s. 23.
37 Geo. III. c. 142, s. 8.
39 & 40 Geo. III. c. 79, ss. 11. 18, 19, 20.
47 Geo. III. sess. 2, c. 68, ss. 1, 2, 3.
53 Geo. III. c. 155, ss. 98, 99, 100.

and so much of every other Act heretofore passed as in any way relates to the making of any laws or regulations by the Governor General in Council, or the Governors in Council of any of the said Presidencies, be and the same are hereby repealed: Provided always, and be it further enacted, that nothing herein contained shall be construed so as to repeal any regulations heretofore made by any Governor

V. Legislative Councils; Courts of Justice; Code of Laws.

General in Council, or Governor in Council; but all such regulations, until they be expressly repealed or altered by some competent authority, shall have the same force and effect as they would have had if this Act had not been passed.

2. And be it further enacted, that there shall be one Legislative Council within each of the said Presidencies of Fort William, Fort St. George and Bombay.

3. Each of the said Legislative Councils shall consist respectively of the Governor General or Governor of the Presidency for the time being, and of all others the Members of the Council of the Presidency and of the Judges of the Supreme Court of Judicature of the Presidency, and of such other persons not exceeding in number, as from time to time shall be appointed by His Majesty, His Heirs or Successors, or by the Directors of the East India Company, subject to the approbation of His Majesty, His Heirs or Successors, *such approbation to be signified in writing under the Royal Sign Manual, and to be countersigned by the President of the Board of Commissioners for the Affairs of India.*

See 33 Geo. 3, c. 155, s. 80.

4. Each of the said Legislative Councils, or so many of the Members thereof as shall be able to attend, shall meet and assemble from time to time at some place, to be appointed by the Governor General, Governor or Vice President, within the towns of Calcutta, Madras and Bombay respectively, or at *some place within twenty miles of the said towns; or in case of any urgent necessity, at* some other place, to be appointed *by the Governor General and Council, or Vice President,* at such times and in such manner as such Governor General, Governor or Vice President, shall also direct; and it shall not be lawful for any of the said Legislative Councils to assemble in the capacity of a Legislative Council, otherwise than as herein provided.

5. Each of the said Legislative Councils shall be capable of deliberating, resolving and acting in its capacity of a Legislative Council, whenever three Members thereof shall be lawfully assembled, provided that one of the three be either the Governor General, Governor, Vice President or some other Member of the Council of the Presidency, and another be one of the Judges of the Supreme Court, but not otherwise, unless there should be no Judge then resident within the Presidency, or the provinces annexed thereto, or unless, upon any urgent occasion, there should be a refusal to attend, or an impossibility of attendance, or any wilful neglect to attend on the part of all the Judges then resident as aforesaid; in any of which cases, and after a Minute of the circumstances shall have been entered upon the proceedings of any such Legislative Council, and signed by the Governor General, Governor or Vice President for the time being, it shall be lawful for any three Members of any such Council, who may be assembled upon any such occasion, to deliberate, resolve and act in all respects as a Legislative Council, in the same manner as if one of the Judges had been present: And be it further enacted, that all the proceedings at any meeting of any such Legislative Council shall be conducted, as nearly as possible, in the same manner and form as the proceedings before the Governor General in Council are by statute directed to be conducted, and that no Governor General or Governor shall have any power, at any such meeting, of passing any law or regulation of his own sole authority: Provided always, that in every case in which anything is by this Act made to depend upon a majority of any of the Legislative Councils, or of any of the Members thereof, every Governor General, Governor or Vice President, shall have a casting vote.

6. Every proposed law or regulation, after it shall have been resolved upon at any lawful meeting of any of the Legislative Councils, shall be sent, in the first place, to the Governor, General, Governor or Vice President for the time being of the Presidency; and it shall be lawful, upon such occasion, for any Governor General, Governor or Vice President, to express his dissent in writing, and to forbid the passing of that law or regulation, and at once to quash and annul the same, or to direct that it shall be sent round to the other Members of the Legislative Council so resident as aforesaid; and every such Governor General, Governor or Vice President, is hereby required, upon every such occasion, within two days from the receipt of every such proposed law or regulation, either to forbid and annul the same, or to direct it to be sent round to the Members of the Legislative Council, and thereupon copies of the same shall be sent to all the Members of the Legislative

Council in which the law or regulation shall have been proposed, who at the time shall be resident within 20 miles of the place where the Council shall have met and resolved upon the law; and every such resident Member, whether he shall or shall not have attended the meetings of the Council at which such law or regulation shall have been deliberated or resolved upon, shall signify in writing, without delay, his assent or disapprobation thereof; and if upon such occasion it shall appear, upon the whole, that the majority of the Members so resident as last aforesaid, within the distance of 20 miles, are adverse to the passing of such proposed law or regulation, it shall be abandoned and fall to the ground; and if any two of the Judges of either of the Supreme Courts, or in case there be only two or only one of the Judges so resident within 20 miles as aforesaid at the time, then if the only Judge, or the Chief Justice, or in his absence the senior Judge of the Supreme Court of the Presidency at which the law or regulation shall have been passed, shall state in writing his or their disapprobation thereof, by reason of his or their opinion and belief that such law or regulation is not within the powers vested by this or any subsequent Act in the Legislative Council in which the law or regulation shall have been proposed, and shall also state his or their grounds or reasons for such opinion and belief, then, unless the Governor General of Fort William shall expressly direct, in manner and form hereinafter mentioned, that it shall have effect, every such law or regulation respecting which such disapprobation, opinion and belief shall have been so stated as aforesaid, notwithstanding it shall have been approved by a majority of all the Members of the Legislative Council so resident as aforesaid, shall be suspended, and shall have no force nor effect until such time as it shall have been referred to the President of the Board of Commissioners for the affairs of India for the time being, and to the Directors of the East India Company, and until the orders of such President respecting the same shall have been received in India; and the said President for the time being is hereby authorized and required, in all such cases, to submit any such law or regulation to His Majesty in Council; and after having so submitted the same, and after His Majesty's pleasure thereupon shall have been declared, to issue his orders to the Governor General of Fort William for the revocation or suppression, or the publication and enforcement of the law or regulation; and if any such law or regulation shall be so directed to be published and enforced, it shall, after such publication, have the same force, authority and effect, and no other, as if no such suspension as hath herein before been mentioned had taken place: Provided always, and be it further enacted, that whenever any of the Judges shall have so stated his or their disapprobation, opinion and belief as aforesaid, nevertheless if a majority of all the Members of the Legislative Council, so resident within twenty miles as aforesaid, shall have expressed their assent to such law or regulation, and if the Governor General of Fort William in Bengal, notwithstanding any such disapprobation of the Judges, shall be willing to take upon himself the responsibility of deciding that such disapprobation hath no sufficient foundation, or that the urgent necessity of the case, and the public safety, require that effect should be given to the proposed law or regulation, respecting which such disapprobation shall have been expressed, it shall be lawful for the Governor General of Fort William in Bengal, to direct that it shall have effect accordingly for eighteen calendar months, or until the pleasure of His Majesty in Council respecting the same, before the expiration of the said eighteen months, shall be declared; and in every such case the Governor General shall state in writing the grounds and reasons of making such decision, and shall cause the same to be entered upon the proceedings of the Legislative Council by which the law or regulation shall have been prepared, and the same Council shall forthwith transmit copies of the law or regulation, and all the proceedings connected therewith, to the Board of Commissioners and Court of Directors in manner hereinbefore provided, in order that the pleasure of His Majesty in Council may be declared thereon; and in the mean time, for the space of eighteen calendar months, or until the disapprobation of His Majesty in Council of such law or regulation before the expiration of the said eighteen calendar months, shall be declared, the law or regulation so directed by the Governor General as aforesaid to have effect, shall be to all intents and purposes as valid and effectual in law as if it had been passed by the Legislative Council without any disapprobation on the part of any Judge or Judges having been expressed.

7. The lawful powers of each of the said Legislative Councils to be exercised in manner and form as herein is expressed, shall extend to the making of laws and

V. Legislative Councils; Courts of Justice; Code of Laws.

regulations for repealing, amending or altering of any regulation heretofore made by any Governor General in Council, or Governors in Council, or hereafter to be made by any of the said Legislative Councils, and to the making of laws and regulations for all other purposes whatsoever, and for all manner of persons, whether British or native, foreigners or others, and for all places and things whatsoever within and throughout the whole and every part of the British territories in the East Indies, in the possession and under the Government of the East India Company, except as hereinafter is excepted, and subject to the conditions and restrictions hereinafter expressed, and at all times and in every respect subject to the full, absolute and supreme legislative power and control of the Imperial Parliament of the United Kingdom of Great Britain and Ireland: Provided always, and be it further enacted, that the Legislative Council of the Presidency of Fort William shall have full power and authority to make all such regulations and laws for the other Presidencies of Fort St. George and Bombay, but that no regulation or law made by either of the Legislative Councils for the said Presidencies of Madras or Bombay, shall at any time have any force, authority or effect, notwithstanding any confirmation of such regulation or law by the Legislative Council of the Presidency of Fort William, except within the limits of the territories constituting the Presidency by the Council of which it shall have been primarily made.

8. It shall not be lawful for any of the said Legislative Council to make any law or regulation which shall in any way repeal, vary, suspend or affect any Act of the Imperial Parliament, nor any Letters of Patent of the Crown, nor in any way affect any prerogative of the Crown or authority of Parliament, nor the constitution or rights of the East India Company, nor any part of the unwritten law or constitution of the realm of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any persons to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the British territories in the East Indies.

9. Except in any such case as hereinafter is specially excepted and provided for, as soon as any law or regulation shall have been resolved upon at any lawful meeting of any of the said Legislative Councils, and shall have been directed by any Governor General, Governor or Vice President to be sent round to the other Members of the Legislative Council, it shall forthwith be published in the Government Gazette, or some other newspaper of the place; and after an interval of not less than fourteen days after such publication, and after a sufficient time shall have elapsed to receive the assent or disapprobation of all the Members of the Legislative Council so resident within twenty miles as aforesaid, the law or regulation shall be laid again before the Governor General, Governor or Vice President, to receive his final or further assent, and if any person or persons interested in or affected by any such law or regulation, shall petition any Governor General, Governor or Vice President of the Presidency, to take into consideration his or their objections against it, at any time before the final or further assent in writing of any such Governor General, Governor or Vice President shall have been given, the Governor General, or Governor or Vice President, shall direct at what time and place any such person or persons shall state his or their objections, and whether by written petition only, or by counsel, or in person.

10. After fourteen days, and at some time not later than two calendar months, from the publication as aforesaid of any such law or regulation, the Governor General, Governor or Vice President shall express his confirmation or disapprobation thereof, and thereupon every such law or regulation which shall have so received the final disapprobation of any Governor General, Governor or Vice President, shall be abandoned and fall to the ground; and every law or regulation made by the Legislative Council of Fort William, which shall upon such occasion receive the confirmation of the Governor General or Vice President of Fort William, shall be fully established as a law; and every proposed law or regulation which shall have been made by the Legislative Council of Madras or Bombay as aforesaid, and shall have received the confirmation of the Governor or Vice President of either of those Presidencies, shall without delay be forwarded to the Governor General of Fort William in Bengal, who thereupon, within one calendar month after receiving the same, shall either communicate in writing his disapprobation thereof to the Governor in Council or Vice President in Council of the Presidency at which the law or regulation shall have been *made, in which case it shall be abandoned and*

and fall to the ground, or the Governor General of Fort William in Bengal, shall cause such law or regulation to be proposed in the Legislative Council of the Presidency of Fort William, in like manner as any other law or regulation, and it shall pass through the same forms, and by the said Legislative Council of Fort William shall be confirmed and fully established, or registered in like manner as if it had been a law or regulation originally brought forward therein, *except that it shall not have any force or effect except in the Presidency in which it shall have been primarily made*; and no law or regulation *of either of the Legislative Councils at Madras or Bombay shall have any force or effect whatsoever until it shall have been so confirmed, and passed into a law and fully established by the Legislative Council of Fort William in Bengal.*

11. *And whereas occasions may arise in which the usual publication in any newspaper of any law or regulation, before the confirmation and establishment of it by the Governor General, would be productive of public inconvenience, and in which it may be desirable that effect should be given to the law or regulation with the least possible delay, it shall be lawful in any such circumstances for the Governor General to direct, that the usual publication in a newspaper before the confirmation of the law or regulation, shall not in that instance take place; and to require also that every Member of the Legislative Council so resident within* 20 *miles as aforesaid, to whom the law or regulation shall be sent, shall communicate to the Governor General his assent or disapprobation within* 24 *hours from the time of a copy of the law or regulation being left at his usual place of residence; and after such time shall have elapsed, it shall be lawful for the Governor General immediately to decide upon the law or regulation, and to establish and give effect thereto, in like manner as in other cases it hath been provided that he may act in respect of any law or regulation, after the lapse of* 14 *days from the publication thereof, in a newspaper.*

12. As soon as conveniently may be after any law or regulation shall have been lawfully and fully established in any of the ways aforesaid, the same shall be carefully registered and preserved as a record by the Legislative Council or Councils through which it shall have passed, and it shall be printed and published in the English language; and for the better securing of a general and accurate publication thereof, one printing-office or press for each Presidency, and no more, shall from time to time be licensed by the Governor General in Council, or Governor or Vice President in Council of the Presidency, to print and publish the laws of each Legislative Council, and the granting or changing of such licences shall from time to time be notified by proclamation or public advertisement; and each of the said Legislative Councils shall from time to time make such standing orders as may be most convenient and effective for the due publication of such laws in as many of the languages of India, and in such manner as will most effectually secure a speedy, full and complete promulgation thereof throughout the British territories in the East Indies, so that the knowledge thereof may be communicated to all who may be liable to be in any way affected thereby.

13. If any person or persons shall wilfully publish any false statement of any law of any of the said Legislative Councils, he or they shall be deemed guilty of a misdemeanor, and shall be punished accordingly; and if any person shall suffer damage or loss in consequence of being misled by any such false statement, it shall be a good cause of his recovering damages in a civil action, to be instituted against the party or parties by whose false statement he shall have been so misled.

14. Within one month after the passing and registering of any law or regulation by any of the said Legislative Councils, the Governor General in Council, or Governors or Vice President in Council, shall send duplicate copies of the same to the Court of Directors of the East India Company, and to the President or Secretary of the Board of Commissioners for the affairs of India, and at any time within one year from the first receipt of any such law or regulation, it shall be lawful for the President of the said Board of Commissioners, after having submitted the same to His Majesty in Council, to transmit to the Legislative Council of the Presidency of Fort William an order for the repeal of the same, and the same shall be forthwith repealed: Provided always, that all acts done under and according to any such law, during its continuance and previous to any repeal thereof, whether such repeal shall take place upon any appeal being made to His

V. Legislative Councils; Courts of Justice; Code of Laws.

Majesty in Council, or otherwise, shall be good and valid; and all persons shall be saved harmless for anything by them done, or omitted to be done, in obedience to or compliance with any such law before the time at which they shall have had, or with due care and watchfulness might have had, notice of the repeal thereof.

15. It shall be lawful for any person or persons to present an appeal to His Majesty in Council against any such law or regulation so registered and published as aforesaid, at any time within eight calendar months from the publication of the same after it has been fully established as a law, and it shall be lawful for His Majesty in Council at any time to repeal the same.

16. Nothing herein contained shall extend, or be construed to extend, to the affecting in any way of the right or power of the Imperial Parliament to make laws for the British territories in the East Indies, and for all the inhabitants thereof; and it is expressly declared, that a full, complete and constantly existing right and power is intended to be reserved, and is hereby reserved to the Imperial Parliament of the United Kingdom of Great Britain and Ireland, to control, supersede, or prevent by Act of Parliament all proceedings and acts whatsoever of the said Legislative Council, and to repeal and annul at any time any act, law or regulation whatsoever by the said Councils at any time made or done, and in all respects to legislate for the British territories in the East Indies, and the inhabitants thereof, in as full and ample a manner as if this Act had not been passed; and the better to enable the Imperial Parliament to exercise at all times such authority, power and right, the President of the Board of Commissioners for the affairs of India shall, once in every Session of Parliament, lay before both Houses of Parliament the laws and regulations of the said Legislative Councils, which since the foregoing Session may have been transmitted to him or to the Secretary of the said Board as hereinbefore is provided; and once in every period of years the said Legislative Councils shall transmit to the President of the Board of Commissioners, and the said President shall lay before both Houses of Parliament the whole of the subsisting laws theretofore made by the said Councils, and then remaining unrepealed and in force; and the said Councils, before such transmission of the same, shall cause the same to be methodically and systematically arranged, and shall annex thereto such tables, indexes, glossaries, and other explanatory documents and materials as may be conducive to the true understanding of the same.

17. All laws and regulations which shall be made and published by the said Legislative Councils in the manner and form hereinbefore provided, as long as they shall remain unrepealed and unaltered, shall be of the same force and effect within and throughout the British territories in the East Indies, and every part thereof, as any Act of the Imperial Parliament is, would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever within the same territories, and in every part thereof, in the same manner as any public Act of Parliament would and ought to be taken notice of, without being specially pleaded and put in evidence.

18. Nothing herein contained shall in any way restrict or affect the powers of any Governor General in Council, or Governor in Council, in any other respect than that of the making of laws and regulations.

(signed) *Chas. Edw. Grey.*
Edw. Ryan.

October 13, 1830.

(signed) *Chas. Edw. Grey.*
Edw. Ryan.

(A true copy.)

(signed) *Holt Mackenzie,*
Secretary to the Government.

— No. 32. —

No. 24, of 1830.

LETTER from *J. Thomason*, Esq. Officiating Deputy Secretary to Government to *P. Auber*, Esq. Secretary to the Court of Directors, transmitting further Communication received from the Judges of the Supreme Court of Judicature at Fort William.

Sir, Fort William, 28th December 1830.

Territorial Department; Revenue.

WITH reference to the concluding paragraph of a despatch addressed to the Honourable the Court of Directors, from this department, under date the 14th October last, I am directed by the Vice President in Council to transmit copy of a further Communication received from the Judges of the Supreme Court of Judicature at Fort William in Bengal, with its Enclosure, explanatory of their sentiments on the existing system of law and government in India, and the changes contemplated by the institution of a Legislative Council.

2. The papers connected with the subject having already been forwarded to the Honourable Court, with a full explanation of the views of this Government, the Vice President in Council has not deemed it necessary to offer any observations on the present occasion.

I have the honour to be, Sir, your most obedient servant,

(signed) *J. Thomason*,
Officiating Deputy Secretary to Government.

(Fort William, Territorial Department.)

ABSTRACT of Revenue Letter, No. 24, addressed to the Secretary to the Honourable Court of Directors, dated the 28th December 1830.

FORWARDING, with reference to papers transmitted on the 14th October last, copy of a further Communication received from the Judges of the Supreme Court of Judicature at Fort William in Bengal, with its Enclosure, explanatory of their sentiments on the existing system of law and government in India, and the changes contemplated by the institution of a Legislative Council.

(signed) *J. Thomason*,
Officiating Deputy Secretary to the Government.

— No. 33. —

LETTER from the Judges of the Supreme Court to the Vice President in Council; forwarding, with their sentiments, Copy of a Letter addressed by them to the Secretary of the India Board, relative to the existing system of Law and Government in *India*, and the Changes contemplated by the institution of a Legislative Council.

Court House, 16th December 1830.

HONOURABLE SIRS,

1. WE have been prevented by the business of the Term and Sittings from replying earlier to the Letter of the Governor General in Council of the 9th of October.

2. We now enclose a copy of our Letter of the 16th October to the Secretary of the India Board, which was sent by the Euphrates, and of which a draft was put into the hands of the Governor General early in October. Several alterations have been made from the draft, and towards the close a difference of opinion between ourselves is noticed, which perhaps affects the perspicuity of that part of the letter. It became necessary, however, to state that difference of our views too late to afford time for making every part of the concluding paragraphs consistent with it; and we trust that no obscurity has been produced which will render our opinions unintelligible or dubious to those who have thought upon the subject.

V. Legislative Councils; Courts of Justice; Code of Laws.

3. In the same spirit of frankness with which our previous correspondence has been conducted on both sides, we proceed to offer such remarks upon the second and subsequent paragraphs of the Letter of the Governor General in Council as appear likely to conduce to a better understanding, without leading to any useless or unnecessary discussion.

4. The principles applicable to conquests by the Crown, we consider to be those which were stated by Lord Mansfield, in the case of *Campbell* v. *Hall*, as it is reported in the 20th volume of Howell's State Trials; and we are not aware of any case of conquest by the Crown, either directly or by means of subordinate government, in which they would not be justly and conveniently applicable; though undoubtedly India has presented the greatest and the most difficult occasion of all that have ever occurred. Those principles acknowledged the obligation of treaties, agreements and capitulations, according to the real intent of them; from the moment that the state of war is terminated by proclamation they restore to a conquered people their own laws and usages, excepting the change of sovereignty, and such alterations as are expressly made by the conquering power; they secure to the King, or his duly authorized representative, the right of making at once and upon the spot those alterations which may be necessary, a power which, without extending to the infringement or abridging of any portion of the law or constitution of the United Kingdom, renders it easy to modify and regulate, without delay, the laws and usages of the new territory to such an extent as may be necessary, on account of those British subjects who may have been employed in the conquest, or who may at first resort thither; and they recognize the unlimited authority of the King in Parliament to make further alterations to any extent. There is nothing in these principles which is adverse to the constituting by Parliament of Local Legislatures, nor even to the delegation by Parliament, as in the case of India, of other powers which are sovereign in the hands of the Crown or Parliament, but which cease to be sovereign when held by delegation and under control; nor is there any thing, as it appears to us, which is at variance with the British constitution, in permitting within a newly acquired territory the existence even of a despotic form of government if it has existed there before, to which no other British subjects but the newly conquered ones, who have previously lived under it, can be made in any way liable, unless by their own choice and act; and which Parliament may at any time alter as it sees fit.

5. We entirely agree that the Imperial Parliament of the United Kingdom is not the place for all the details of Indian legislation, nor generally for the regulation of the internal affairs of India; and that as long as this country is governed by England, these ought always to be provided for, either by a separate body politic in England, or a local legislature in India, or rather by both of these. But we are at least as fully satisfied that it is of vital importance to England, that in matters of legislation those bodies should be the Ministers of Parliament, and absolutely subject to its authority, and that means should be secured whereby, at all times the intentions of Parliament, and when it chooses to interfere, its specific enactments, may be sure of being carried into effect. Instances, undoubtedly, might be adduced in which evils have been avoided in India by the force of circumstances having deadened the impulse of Parliamentary enactments; but such necessities will be less likely to occur as India comes to be better understood, and at any rate a danger incalculably greater and worse for England would arise from the existence within it, of any power resting upon legislative bodies in India, not really dependent upon Parliament, and at whose disposal and command the Revenues of India should be placed.

6. We are sorry to observe that we had not expressed the opinions which we were invited to give upon the subject of a code of laws, so as to prevent a misapprehension of our sentiments as to some points. We did not intend to suggest that the Hindu and Mahomedan Laws of property in moveables should at once be abrogated, but only to point out that, except as to the succession to moveables, including the law of adoption, there is not any very important difference between those laws and our own. We hoped we had sufficiently manifested our aversion to every violent, hazardous, or hasty change. It was our intention to recommend in every thing a slow and cautious progress; and that there should be no show of doing what it is impossible to accomplish. One of us entertains a strong conviction that it is so impossible to provide immediately any fixed laws for the whole of India,

India, that it is desirable no new laws at all, which apply with any minuteness to the subject-matter of them, should be attempted at present, except for a limited district. To him it appears that, for the mass of the territories, economical regulations are all that can be well enacted for some time to come; but if there were a harmonious co-operation of all part of the Government, he believes it to be quite practicable, without any violence, hazard or hurry, to establish and carry into execution a sound and complete system of law for a moderate portion of territory around the seat of Government; and that it is in the highest degree desirable that this object should not be renounced, because more cannot instantaneously be attained.

7. He cannot think that the Government would be at all placed in the position which is contemplated in the 10th paragraph of the Letter of the Governor General in Council. His suggestion is that the existing system of law and government, with such general amendments as may be presently practicable and expedient, should be continued in all the provinces except that one which immediately surrounds the seat of Government; and that throughout all the wide extent of the others, British persons whilst resident there should lose the rights of English law, and be subject to the same regulations with the natives; but that in the one province adjoining the seat of Government, without any further adherence to English forms or rules than may be necessary to secure the complete subordination to the United Kingdom, a more definite law, a more perfect administration of it, and more precise and certain rights of person and of property, than it is possible all at once to secure to the whole of India, should be established; and established, not for British persons only, but for all, yet to be entirely superintended and regulated by a Legislative, a Judicial, and an Executive Council, the last of which would be the Governor General in Council, and in each of the two first the Governor General and one Councillor, would preside. This surely could not afford the pretence which is apprehended in the Letter of the Governor General in Council for an insinuation that the other provinces were wilfully left to a system which it was thought unjust to apply to our own countrymen, and when a repugnance is so strongly expressed to the passing of what is called a sentence of virtual outlawry of the natives. Sir Charles Grey requests that it may be remembered to have been his proposal to leave to the natives all the protection of law which they now have or ever had, and to give them as much more as may be possible; to bring British persons within the regulations now applicable to the natives in one space, and natives within a law adapted to the British in another; and by degrees to extend the latter system, but with all the caution and deliberation which such an undertaking would require. Surely it is the continuance of the existing distinctions rather than this scheme, which merits, if either of them does, the appellation of an outlawry of the natives, and it must at the moment have escaped the attention of the Governor General in Council, that the provinces subordinate to this Presidency have been for more than 70 years, and now are subject, but if this plan hitherto were to be adopted, would no longer be subject to a scheme of laws and judiciary system which it has been, and is still thought either unjust or inexpedient to apply to our countrymen who inhabit India.

8. What should be exactly the extent and boundaries of a province of Calcutta, is not a matter of first rate importance. The main point is, that some *locus standi* should be secured for what may really deserve the name of law. The consideration which suggested the particular district named by Sir Charles Grey, was chiefly its clear and distinct boundary; but it would certainly be desirable to include the suburb of Hourah, and perhaps more than that on the western bank of the Hooghly, were if something less than the Delta of the Ganges were to be taken on the other side; but if the Delta by itself is thought to be too inconsiderable, perhaps it would not be thought too much to add to it the district on the western bank of the Hooghly which lies between the Roopnaram and the Adje rivers, taking the high road which runs from Keerpoy through Burdwan and Mungulcote, as the western boundary, but including the two latter towns. Since 1726 Calcutta has been a British town and subject to the English law. The lapse of more than a century, the establishment for the last 20 years of a free trade, the prospect of an increasing intercourse with Europe, the altered condition of India, of the United Kingdom and of the world, would seem to be sufficient reasons for substituting now a country for a town; but the proposal of Sir Charles Grey does not involve an adherence to the system now established in Calcutta. He is well aware

V. Legislative Councils; Courts of Justice; Code of Laws.

of the evil of attempting too closely to adhere to English forms of law and procedure in India, and of the mischief of a separation and opposition between an English and an Indian system, and of other evils which he is not the less desirous to avoid for the future, because he is unable to remove them at present. He would not wish any other distinction between the province which would be the seat of Government, and the rest of the territories, than that in the one a system of law should be established with a firmness and precision which he feels confident might be attainable there, but which he strongly apprehends would be impracticable at present for the whole of India; yet for the rest of the territories he has never contemplated the necessity of anything approaching to martial law or a "military" despotism. He would leave for the present to the rest of the territories what they now have. He would give to one district something better. If, instead of this, Calcutta should be put upon the same footing with all India, he is apprehensive that it might operate as a dissolution of all law, that no constant and steady execution of regulations, made with any fullness of detail for all India, could either be insisted on or expected, but must come to depend upon the will of the local executive power, which must itself be influenced by the infinite and fluctuating considerations of temporary convenience arising out of the vast and unsettled field of Indian Government; that neither British persons nor any others in this country would have anything which they could claim as of right; and that the authority of the controlling powers at home would come to be merely nominal. On the other hand, it can scarcely upon consideration be thought by the Governor General in Council, that the proposed scheme of beginning with a single province would be either impracticable or difficult, inasmuch as it consists mainly of a restriction to a narrower sphere of that which the Governor General in Council would attempt for the whole range of India. It can scarcely be liable to the imputation of injustice to the natives, inasmuch as it would take from them nothing which they have or ever had, but would confer on them a great deal which they have not. Sir Charles Grey will add to these considerations a statement of his belief, that it is only in this way it is at all probable that the Crown and Parliament would assent to the British settlement at Fort William being subjected in legislative and judicial matters to the Government of the Company, unless arrangements could be agreed upon, by which the authority of the Crown and Parliament, in the control and direction at home of Indian affairs, could be rendered more immediate efficient and real than it is at present, or ever has been.

In conclusion, we beg leave to say, that if any further communications on our part should be thought desirable, it will at all times give us the greatest pleasure to enter upon them.

We have, &c.

(signed) *Chas. Edw. Grey.*
Edwd. Ryan.

(Enclosure.)

— No. 34. —

LETTER from the Judges of the Supreme Court to the Secretary of the Board of Commissioners for the Affairs of *India*, relative to the existing System of Law and Government in *India*.

Sir, Court House, Calcutta, 16th October 1830.

1. WE have now the honour of complying to the best of our abilities with the request contained in your Letter of the 15th of November last.

2. To exhibit distinctly our view of the circumstances in which the Court is placed, it is necessary to go through a statement which we do not only fear will be tedious, but of which the substance must be familiar to the President and Board, yet the facts have been regarded in such different lights, that unless we communicate our own impressions of them, the foundations on which our opinions rest will be liable to be misapprehended.

3. The first East India Company was constituted for the establishing and improving of a difficult and valuable trade for a limited time; and with a reservation to

V. Legislative Councils; Courts of Justice; Code of Laws.

to the Crown of a power to revoke the Charter when the good of the nation might require it.

4. In the reigns of William III. and Queen Anne the old Company was induced to surrender its charters; its corporate capacity was terminated, and its members were admitted into another Company which had been constituted, not by the Crown alone, but by Act of Parliament, and by Letters Patent of the Crown issued in pursuance of the Act, and a power was reserved of entirely putting an end to the United Company after a certain time and upon a certain notice, and upon the repayment of a sum advanced by the Company to the Crown.

5. The possessions of the old Company in the East Indies were transferred for a valuable consideration to the new one, and they were principally the island of Bombay, a town and fortress at Madras, and another at Calcutta. These three places, of which the property was then in the United Company, or those who held under them, were plainly recognized by the Crown in 1726, in Letters Patent of that date, to be British settlements, and within the King's peace and allegiance, and the Company who accepted the Charter must be deemed to have been parties to it.

6. Bombay had long been severed from the Mogul empire, but Madras and Calcutta probably were considered, even subsequently to this period, by the Indian Princes whose territories surrounded them, as nothing more than factories in which they had given a property to the Company, and allowed them to raise fortifications for their defence in times of disturbance.

7. In 1730, the Company was declared in explicit terms by the statute of the 3 Geo. II. c. 14, to be a perpetual corporation, and to be entitled as such, to continue to trade in common with other British subjects, if at any time their privilege of an exclusive trade should be terminated. There had been a previous Act in 1710, intended probably to have the same effect, but of which the language was rather obscure and uncertain.

8. The powers of political government, which had been given by the British Crown and Parliament, whether to the new Company or the old, down to the year 1767, were calculated mainly and almost entirely for the defence and protection of the three settlements above mentioned and the subordinate factories, and of the great trade of which they were the principal seats.

9. In 1757, however, in the recovery and protection of the settlement at Calcutta, an operation in which the Company were assisted by the King's forces, the abilities of Colonel Clive were so much more than equal to the occasion, that he suddenly found himself the conqueror of the whole of the rich and populous provinces of Bengal, Behar and Orissa; the capital was in his possession, and the Subahdar or Viceroy, whom he had defeated in battle, was killed by one of his own people. Colonel Clive and Admiral Watson, whilst the contest was going on, had promised a Mahomedan officer of the enemy, that if he assisted them, he should be Subahdar, and Colonel Clive accordingly made him assume the title and state of Subahdar of the three provinces, though he had no claim by any appointment of the Mogul Emperor, nor by any hereditary right, but depended entirely upon the support of Colonel Clive, whose act must have required in this case to be ratified by the British Crown, before it could be considered as standing in the way of any arrangement which the Crown or Parliament might choose to make respecting the conquest.

10. To pass over intermediate events, the Governor and Council of Fort William, on the part of the East India Company, in February 1765, made an agreement with the successor of this Subahdar, of which the substance was, that he should have the title and rank of Subahdar and Nazim of Bengal, Behar and Orissa, but that the Company should nominate a Deputy Subahdar, who should not be removable without their consent, and who should have the management of all public affairs, including the revenue and the appointment of officers in that department, but that these should be liable to be removed on the application of the Company. A British person, appointed by the Company, was to be always resident with the Subahdar, and no European was to be admitted into his service. The Subahdar agreed that the opinion of the Company should be the criterion of what would conduce to his honour and reputation, and the whole military force was put into the hands of the Company, to whom Burdwan, Midnapore and Chittagong, three districts in Bengal

V. Legislative Councils; Courts of Justice; Code of Laws.

yielding a large revenue, had been some time before assigned for the purpose of their maintaining an army.

11. At a later period of the same year, 1765, the Company obtained from the Mogul Emperor, who for some time had lost all real power in the Lower Provinces, a Firmaun, which purported to be a grant in perpetuity of the whole revenues of Bengal, Behar and Orissa, upon condition of their providing for the expenses of the Nizamut, and paying to the Emperor annually 26 lacs of rupees.

12. In this manner within a short time, and before the close of the year 1765, the Company had taken into their hands all the means and forces of government throughout Bengal, Behar and Orissa; and as a perpetual right to the land revenues necessarily implied the right of entering and measuring the lands, and of ejecting the tenants upon failure of payment, it was absolutely incompatible with any adverse possession in other hands of the dominion of the country. There were then but three modes in which it seems to have been possible to contend that the Company had the right to keep the powers they had obtained; first, as filling the offices under the Mogul Emperor of perpetual Dewan and Commander of the Army in these provinces, and as holding in perpetuity the three districts of Burdwan, Midnapore and Chittagong, with all such rights annexed as the Subahdar had formerly enjoyed; secondly, as having become, in fact, themselves the Sovereigns of Bengal, Behar and Orissa; or, thirdly, that as British subjects they had obtained them by conquest and treaty, in trust for the British Crown. It would not have been reasonable that a Company which had been created by the British Parliament, and was composed for the most part of natural born British subjects, to whom the temporary privilege had been given of excluding all other British subjects from the sea coasts of more than half the globe, should have seized the opportunity afforded by these privileges to secure to themselves a power, either as independent potentates, or as servants of a foreign Prince, which might be turned to the injury of the country to which they owed their political existence; accordingly the British Parliament, by the Act of the 13 Geo. III. c. 63, seems to have decided that the last of the three forms stated above was the only one in which the Company could be permitted to hold what they had so unexpectedly acquired; and as the circumstances were such as had not been at all contemplated when their Charter for trade was granted, under the statute of the 9 William III., and as those circumstances might vitally affect the interests and constitution of Great Britain, provisions entirely new and different were justified and required by the occasion.

13. There was one difficulty, which would not perhaps at the present day have been thought so considerable as it was then. It was imagined that the land revenues, after defraying the expenses of Government, would still yield a large surplus, and this the Company claimed as their lawful profit, and that they had a property in the revenues. On the other hand, it was contended, and indeed it was resolved by the House of Commons, that the revenues belonged to the State. This ended in a provision, which still in effect subsists, that the revenues and territorial acquisitions should remain for a limited period in the possession of the Company, without prejudice to the claim of the nation; and the matter is now of less consequence than it was formerly, since the expenses of Government, to which the territorial revenue is specifically appropriated by Act of Parliament, are such as to make it unlikely there will be any great surplus after discharging the public debt unless taxes should be imposed to a considerable extent; and even in the event of a surplus, by a temporary provision in the statute it is allotted, in ascertained shares, to the Company and the Public.

14. To a certain extent the statute of the 13 Geo. III. c. 63, seems to be clear and decisive. It put an end to all question as to the dependence of the Company on the Parliament, and as to the absolute right of the British Legislature to regulate and direct the whole powers of political government which the Company might then have or thereafter acquire. The Parliament itself nominated in the statute the five persons who for the next five years were to be the Governor and Council in Bengal, and who were not to be removable by the Company, reserving to the Company the power of appointing subordinate agents for the management of their commercial affairs; and although the Governor and Council were subjected to the lawful orders of the Court of Directors, the Directors were placed, as to matters of government, under the superintendence of the High Treasurer or Commissioners of the Treasury and one of the Secretaries of State. The powers of government which the Company had

V. Legislative Councils; Courts of Justice; Code of Laws.

had before possessed under the Act and Charter of the 9 & 10 William III., and which were adapted to the management of a few stations held for the purposes of trade, were merged in those larger and more general powers which were now vested by statute in a Government calculated for the administration of the affairs of several populous and rich provinces. Since that time the corporate capacity, the right to trade, and the property of the Company, have been in law, and according to statutory provisions, a distinct and separate thing from their powers of political government. The first are secured by a Charter, which is permanent, and unless forfeited, cannot without a violation of constitutional right be annulled; their powers of Government are entrusted to them for a fixed period, beyond which, they depend in all respects upon the will and pleasure of the Parliament. Unfortunately these matters are not so easily distinguishable in fact as they are in law, and they have continued to be entangled at several points, and are frequently confounded in the minds and language of those who think and speak about them; and it must be allowed, that although the Company's powers of government, whatever they were at the period of which we are speaking, were entirely subjected to the British Crown and Parliament, it was not, even in law, made quite so plain and certain how far and in what manner it was meant to assert the sovereignty of the Crown and the authority of Parliament over the provinces in which these powers were to be exercised, and especially to what extent it was intended that the powers of legislating and of administering justice, which had existed under the former governments of the country, should survive the change which had taken place. The title of the Act implied only the establishment of regulations for the affairs of the Company, not the establishment of dominion and law over the whole of a newly-acquired territory and its inhabitants; there was no formal declaration in it, even of the sovereignty of the Crown; the settlement at Fort William, and the factories and places subordinate thereto were mentioned distinctly from the provinces at large; and there were many expressions and provisions whence it might be inferred that the inhabitants of the provinces were not considered as having become British subjects, which would have been the legal consequence of the provinces having become British territory. But, on the other hand, the whole civil and military powers of Government throughout the provinces had, for some time, been in the hands of the Company; and the governments newly nominated and appointed by Parliament were directed to exercise the same, including the ordering and management of the revenue, which, as we have stated, was absolutely inconsistent with the dominion of the country being in any adverse possession; and there is no supposition on which it can be conceived to have been intended by the British Parliament, that British persons, appointed by the King in Parliament to exercise all the powers of Government, should exercise them in any subordination, either formal or substantial, to any other Crown than that of Great Britain itself. Since that period neither the Mogul Emperor nor the titular Subahdar and Nazim, have ever been permitted to do any important act of authority within Bengal, Behar or Orissa. In the course of the debates which preceded the statute, the House of Commons had resolved, with reference to the revenues and territorial acquisitions, that "all acquisitions made by treaty with foreign Princes did of right belong to the State;" and by the statute they were declared to be left in the possession of a British Company by the permission and will of the British Parliament. By the Charter of Justice, which was granted under the Great Seal in the next year, 1774, writs in the King's name were directed to be issued into every part of the provinces of Bengal, Behar and Orissa; and it has never from that time until this been disputed that these writs, against certain classes of persons at least, have always been legal, and of as full force and effect in the outer borders of the provinces as in the town of Calcutta, or as in England itself. The writers, too, who have been the best qualified to pronounce an opinion upon this subject, and amongst the rest Mr. Harrington, a chief Judge of the Sudder Adawlut, who wrote and published, with the sanction of the Court of Directors, an Analysis of the Laws and Regulations of Bengal, have always dated from this statute, or from the earlier era of Clive's conquest, that sovereignty of the British Crown over Bengal, Behar and Orissa, of the present existence of which throughout the British possessions in India there cannot be any question.

15. Perhaps in these circumstances the most consistent and tenable ground on which the enactments of the statute of the 13 Geo. III. c. 63, can be placed, is the supposition of the sovereignty of the British Crown and the authority of Parliament

V. Legislative Councils; Courts of Justice; Code of Laws.

liament having been fully established by it, or by what had previously taken place; but that it was not intended to abrogate the previously existing laws of the new territories further than was expressly declared, nor all at once to abolish or preclude the powers of legislating and of administering justice, which the Company had obtained from the former governments, but only to subject these to the control and regulation and to the will of the Crown and Parliament, at the same time that means were afforded to the Indian Government of bringing the whole territories gradually into a subordination to the settlement at Fort William, and of making regulations by which, under the control of a Supreme Court of Justice, one uniform system of law and government, not repugnant to the laws of England, might ultimately be established. To leave for a time to the old forms of government a distinct existence was not only the course which the difficulties of the case seemed to point out, but it was, perhaps, in some degree, required by good faith, and was recommended by considerations of humanity. It seemed to be implied in the grant by which the Dewanny had been given up, and in the agreements which the Company had made with the Subahdars whom they had set over the provinces, that for a time at least the Nizamut or Mahomedan government of the provinces should be maintained. The Crown and Parliament, though they had been no parties to the agreements, had not cancelled them, and were certainly bound in justice, if they took any benefit from them, to observe the conditions which might be annexed; and although the obvious intention of those who were parties to the grant of the Dewanny, and the plain meaning of the words were only that the Mogul Emperor should not be called upon for any of the expenses of the Nizamut, it might be contended, that the use of the terms "Nizamut" and "Dewanny," which were well known offices, including the whole government, implied some retention of its Mahomedan forms and character, and under the existing arrangements with the titular Subahdar, there was a system of Mahomedan government in action in the provinces, at the head of which was placed a native, nominated by the Company as Naib Subah or Deputy Subahdar. Upon the supposition, that the statute established the sovereignty of the British Crown over the provinces, it would have followed, but for these considerations, that the existing inhabitants would have become, not naturalized, indeed, but still British subjects, though with the liberty of removing themselves and their property. Lord Mansfield's declaration of the law on this point, in the case of *Campbell* against *Hall*, in the very year in which the Charter of Justice was granted, must be held to be conclusive, and to have expunged the barbarous tenets of some lawyers of a former time, that a people uninstructed in the Christian religion could neither claim protection as their right, nor owe allegiance as a duty, to the British Crown. But if the Act and Charter passed upon the supposition of the Nizamut and Dewanny being maintained in their Mahomedan form, except where Parliament had expressly altered them, or might afterwards interfere to do so, those who at the time were living under the Mahomedan system of government in the provinces, might be considered as entitled, notwithstanding the territory had become British dominion, to stand in something like the same relation to the British Crown, as the European inhabitants of factories had been permitted to maintain with the Mogul Sovereigns and other Indian Princes, a relation which preserved to them their character and rights, respectively of British, French, or Dutch subjects, though inhabiting the territories of a foreign Sovereign. It was no longer indeed, as it seems to us, possible to contend, that the natives born subsequently within the provinces would not be subjects of Great Britain, but they might perhaps be considered to be so by reason of their being subjects of an Indian realm which had become a dependency of the British Crown and Parliament, but which still retained, by permission of Parliament, some distinct powers of legislation, and of administering justice, as portions unabrogated of their former laws. It was the more reasonable to lean to this interpretation, because the Mahomedan and Hindu inhabitants of these provinces, like the clients under the Roman law, or the vassals of the feudal system, and indeed the common people in every other state of government in which numerous chieftains or heads of political or religious classes exist, had been accustomed to think more of their fealty to the immediate chief, upon whose land, or under whose protection or patronage they lived, than of the allegiance due to a common and supreme sovereign; the country was in a state in which the people ranged themselves under different flags, rather than according to boundaries of territory; the Hindus and Mahomedans could not suddenly, and all at once, have been brought under an entirely new and fundamentally different system of laws, without the most extreme difficulty and inconvenience; and as to the

Mahomedans,

Mahomedans, there was the further consideration, that their Koran enjoined obedience to those rulers only who protected their religion. No lasting inconvenience was necessarily connected with this view of the case, treaties among Indian Princes, unless there was some special provision in them of a more permanent character, had been for the most part considered by themselves as binding only during the lives of those by whom they were made. Subsequent experience has shewn, that the expounders of the Koran find no difficulty in reconciling the allegiance of Mahomedans with that degree of toleration and protection of their religious usages, which the British Parliament has felt no difficulty in sanctioning; and as far as it was consistent with treaty, the Parliament is supposed to have always had the power and right, whenever it might choose to interfere, of modifying and altering those remnants of Mahomedan government which it permitted to exist in a distinct state. Thus the subsequent existence of the Nizamut is reconciled with the statute of 13 Geo. III. c. 63; but is not supposed to have been left upon so stable a foundation as to have prevented it from being moulded into a more British form, when those were dead who had personal claims to insist on its continuance; and when the next generation of natives, without any abrupt offence to their prejudices and habits, might be brought more immediately under the influence of British institutions. The exercise also of certain powers by the British Government is explained, which cannot, strictly speaking, be shown to be derived from Parliament, though subsisting only by its permission, and to be exercised in subordination to its authority and will.

16. The first establishment of the Supreme Court of Judicature at Fort William was directed by the statute on which these observations have been made. The object in making them has been to explain the powers and jurisdiction which were given to the Court, and to show at the same time how imperfectly defined were the foundations on which it was placed, and by how many obscure difficulties it was surrounded. For these purposes there are still some other facts which it is necessary to revive and bear in mind. The East India Company had very early been empowered to establish Courts, and in many cases to put in force within their settlements and factories the English laws, and a similar power was given to the new Company by the Charter of the 10 William III.; but in 1726 these Courts had been superseded, and there had been established at each of the settlements of Madras, Bombay and Calcutta, by Royal Charter, a Court consisting of a Mayor and Aldermen, for the trial of civil actions, and a Court of Oyer and Terminer, consisting of the Governor and Council, for the trial of criminal offences, and the Governor and Council were also constituted Justices of the Peace, and had continued to be so from that time. This Charter was surrendered, and a new one granted in 1753, with some alterations; but not such as to change materially the structure of the Courts as stated above. These Courts at Calcutta were acknowledged by all persons after the conquest of Clive, to be no longer sufficient for the administration of justice. Besides their powers of political government, and their rights connected with the general revenue under the grant of the Dewanny, the Company claimed the three districts of Burdwan, Midnapore and Chittagong, as entirely belonging to them, and the property also of a large zemindary lying to the south, but beyond the boundaries of Calcutta; and they had enjoyed for themselves and their servants the privilege of trading free of duty throughout the provinces. There had been several factories and smaller stations, called Aurungs, in different parts of the provinces, where their agents and servants, and makers of salt, and weavers, and other persons employed by them, or living under their flag and protection, were collected, and whence the upper agents traversed the country in all directions: some of them were guilty of many violent and oppressive acts, and a state of the greatest disorder had ensued. It was expressly with a reference to these circumstances, to the insufficiency of the former Courts, and for a remedy of these evils, that the new Court was directed to be established; and the statute fixed the outline of its powers and authority, which were to be more distinctly and specifically developed in a charter to be granted by the Crown in pursuance of the statute.

17. The statute provided that the Court should exercise all civil, criminal, admiralty and ecclesiastical jurisdiction, and that it should be a Court of Oyer and Terminer and Gaol Delivery, for the town of Calcutta and factory of Fort William in Bengal, and the limits thereof and the factories subordinate thereto; and that the charter to be granted by the Crown, and the jurisdiction and powers to be thereby

V. Legislative Councils; Courts of Justice; Code of Laws.

thereby established, should extend to all British subjects who should reside in Bengal, Behar and Orissa, or any of them, under the protection of the Company; and that the Court should have full power to hear and determine all complaints against any of His Majesty's subjects for any crimes, misdemeanors or oppressions, and to hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Behar and Orissa, and any suit, action or complaint against any person who at the time of the cause of action arising should be employed by or in the service of the Company, or of any of His Majesty's subjects, and should hear and determine any suits and actions of any of His Majesty's subjects, any inhabitant of India, residing in Bengal, Behar and Orissa, upon any agreement in writing where the cause of action should exceed 500 Rs., and where it should be agreed that in case of dispute the matter should be determined in the Supreme Court, and that such suits or actions might be brought in the first instance before the Court, or by appeal from the sentence of any of the Courts established in the provinces. That the Governor General and Council, and the Chief Justice and other Judges of the Supreme Court, should have full power and authority to act as Justices of the Peace for the settlement at Fort William, and the several settlements and factories subordinate thereto, and to do all things to the office of a Justice of the Peace appertaining, and for that purpose the Governor and Council were authorized and empowered to hold Quarter Sessions at Fort William four times in the year; that in cases of indictment or information laid or exhibited in the Court of King's Bench in England, for misdemeanors or offences committed by Governors or Judges in India, the Court of King's Bench might award a *mandamus* to the Supreme Court, requiring it to examine witnesses and receive proofs, and to issue such summons or other process as might be requisite for the attendance of witnesses; and in case of any proceedings in Parliament touching any offences committed in India, that it should be lawful for the Lord Chancellor, and Speakers of the two Houses, to issue their warrants to the Governor General in Council, and the Judges of the Supreme Court, as the case might require, for the examination of witnesses; and such examinations duly returned should be good and competent evidence. A like power of directing to the Supreme Court writs of *mandamus*, or commissions to take evidence, was given to all the King's Courts at Westminster in actions or suits of which the causes should have arisen in India, but an exception was made that depositions taken in this manner should not be evidence in capital cases, unless in Parliament.

18. In stating the fuller and more express ordinances of the Charter by which, in the following year, the Court was established, it may be as well, for the sake of brevity, to pass over the authority of the Court as a Court of Equity, of Admiralty, and an Ecclesiastical Court, and to describe only its other powers and jurisdictions, namely: First that which the Justices of the King's Bench have in England by the common law, and to be exercised especially for the conservation of the peace; secondly, the hearing and determining of pleas in civil actions; thirdly, its jurisdiction as a Court of Oyer and Terminer and Gaol Delivery; and fourthly, powers to be exercised in assistance of the proceedings, criminal or civil, instituted in Parliament, or in the Superior Courts in England for causes of action or offences in India; and it ought to be borne in mind, that whatever reason there may be to suppose that the statute of the 13 Geo. III. c. 63, was somewhat imperfectly worded by reason of its being the production, not of calm leisure and clear views, but of a struggle of parties, after the attention of all had been exhausted and their conceptions disturbed by the disputes of several successive Sessions, there is no ground for thinking that the Charter itself, though its form must have depended in a great measure upon the statute, was drawn up otherwise than with great care. The case of *Campbell* against *Hall*, which was heard and decided in that very year, shows how much the minds of some of the principal lawyers of the time, and especially Lord Mansfield, had been engaged in those great questions which the Charter involved; and it is known that it was subjected to the inspection of Lord Thurlow, Lord Loughborough, Lord Bathurst, and Lord Walsingham, and received their corrections and amendments.

19. Justices of the Peace had been established at Madras, Bombay and Calcutta, since 1726, and the statute of the 13 Geo. III. c. 63, enacted, that the Governor General and Council, and the Judges of the Supreme Court, should be Justices of the Peace for the settlement of Fort William and the settlements and factories subordinate thereto; and the Governor General in Council were directed to hold Quarter

Quarter Sessions at Fort William. By the Charter which followed the statute, the Court of Quarter Sessions and the Justices were made subject to the control of the Supreme Court for any thing done by them while sitting as a Court of Quarter Sessions or in their capacity of Justices, in the same manner and form as the inferior Courts of Magistrates in England are by law subject to the order and control of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of *mandamus*, *certiorari*, *procedendo*, or error. By the fourth clause of the same Charter it was ordained, that the Judges of the Supreme Court should respectively be Justices and Conservators of the Peace, and Coroners within and throughout the provinces, districts and countries of Bengal, Behar and Orissa and every part thereof, and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England by the common law thereof. It has not, as far as we are aware, been questioned that under these provisions there was given to the Supreme Court the same power and control over the Court of Quarter Sessions and over any of the individuals, amongst whom was each of the Judges themselves, who were constituted Justices of the Peace, as the Court of King's Bench has over Justices of the Peace in England; nor can it reasonably be contended that the authority of the Judges in this respect was limited to the settlement at Fort William and the factories and places which had been subordinate to the settlement before Clive's conquest; for, first, not only were the powers given in the fourth clause of the Charter expressed to be such as the Justices of the King's Bench had by common law, which, not being those of local Conservators of the Peace merely, nor such only as were possessed by the other Judges, are known to have extended wherever the King's Peace was to be preserved; but those who framed that clause of the Charter, as if to prevent the possibility of doubt, took care to employ the words "throughout the provinces and every part thereof;" words which, except by a counsel in support of his case, can never be supposed to have been heedlessly used; or to have been meant when sanctioned by the Great Seal, to be treated as an empty form by the Judges to whom the Charter was given as the text of their duties. Secondly, the principal motive which led to the establishment of the Court, was a desire to prevent the violence and oppression of which British persons and other agents of the Company were guilty in the provinces, and for the correction of which the former Courts were declared insufficient. This could not have been expected of the Court if the Judges were to have power, as Conservators of the Peace only at Fort William or in the scattered factories, and to be powerless in the interjacent spaces, whilst British persons, who were acknowledged to be independent of the Nizamut and Mahomedan laws, might range the provinces at large. If a murder was committed, or false imprisonment made in the provinces by a person amenable only to the Supreme Court, it was necessary that the Judges, as Coroners and Conservators of the Peace, should have a right of instant investigation and of affording immediate relief. Their powers would not have been adapted to the increase of territorial acquisitions, or in any way more effectual than those of the former Justices of the Peace, if they had been confined within the same bounds. Thirdly, it never has been contended that writs of *habeas corpus* to release from wrongful imprisonment may not be issued, or that they have not been lawfully issued to British persons in the provinces; and we apprehend that it is upon the fourth clause of the Charter that the power of issuing any writ of *habeas corpus* at all will be found to rest; and that in this respect at least that clause is something more than idle words, and that the powers of the Judges given to them by it, are not merely those of ordinary Justices, but such as belonged to the Justices of the King's Bench by the common law. Fourthly, it was in no way inconsistent with the supposition of the provinces being a distinct subordinate realm, that the King should appoint Conservators of the Peace there with the fullest power. It never has been questioned, that the process of the Court as a Court of Civil Pleas and a Court of Oyer and Terminer was intended, as against British persons, at least to run through every part of the provinces, and for the purpose of enforcing the attendance of witnesses; this has not been restricted to British persons, but is compulsory upon the native inhabitants, as well as others. This being the case, it would have been difficult to find any good reason for confining to narrower local bounds the powers given to the Judges for the conservation of the peace; nor has there ever been any way in which the process of the Court, in any of its several capacities, could be effectually enforced or supported, unless by a co-extensive power of preventing a riotous resistance of it. Lastly, this point seems to be placed beyond doubt by the 33 Geo. III. c. 52, s. 151,

V. Legislative Councils; Courts of Justice; Code of Laws.

s. 151, in which it is declared, that the Governor General in Council, and the Judges of the Supreme Court, had theretofore been authorized by the law to act as Justices of the Peace within and throughout the provinces, districts and countries of Bengal, Behar and Orissa; and since that statute, under commissions authorized by warrant of the Governor General, but issued by the Supreme Court, and sealed with the seal thereof, there having been Justices of the Peace resident in all parts of the provinces, who are acknowledged to be, in that capacity, subject to the control of the Supreme Court, and whose proceedings may be removed into that Court by writ of *certiorari*. Supposing it then to be beyond dispute that the powers given to the Court in 1774 by the fourth clause of the Charter, were not limited to the settlement at Fort William and the subordinate factories, but extended throughout the provinces, the reasons for thinking that the native inhabitants were not exempted from them, are, first, that in that passage of the Charter no such exemption is made; secondly, that the nature of the power, and the objects of it, are absolutely incompatible with any exemption of particular classes of persons. No Conservator of the Peace at any time or place, no Justice of the Peace at present in the provinces, could make any distinction of persons in the discharge of his peculiar duties. If an affray or riot takes place, especially in the night time, it is impossible that there can be any selection of the rioters. If one of the Council or a Judge of the Court in 1775, or at any time previous to 1793, when they were the only Justices of the Peace, should have been resisted, and himself or his assistants imprisoned or maltreated by natives when he was discharging his duty as a Justice of the Peace in the provinces, even though the primary cause of his being called upon to act might have been a breach of the peace by a British person, it could not have been maintained that the Court had no power to protect him, or release him from imprisonment; and there seems to be equal reason in law, that the same power should have continued to subsist for the support and protection of those who act under the Commission of the Peace, which is issued by the Court, and whose proceedings under that commission are expressly subjected to the control of the Court. If a criminal in the provinces, amenable to the British law and to the Supreme Court, and to no other tribunal, be harboured and abetted by natives, surely they are not to set at defiance the Justice of the Peace who is to apprehend him, and the Supreme Court to whom the Justice is answerable. We are aware of its having been said, that the Charter exceeded in some particulars, and went beyond the words of the statute. We do not admit this to have been the case; but consider, on the contrary, that the directions of the statute, that the Court should exercise all criminal jurisdiction, and that the jurisdiction should extend to all the King's subjects who should reside in the provinces, implied and made it absolutely necessary that there should be a power similar to that of the Justices of the King's Bench, extending throughout the provinces; but even if this necessity had not been created by the statute, the Charter, for every purpose that was within the King's prerogative, and which was not prohibited in express terms by the statute, would not have been the less valid and effectual. Supposing the provinces to have become British dominions, then whether the statute sufficiently declared that the Judges of the Supreme Court were to be Conservators of the Peace throughout the provinces or not, it is certain that it did not constitute any other persons, so as to preclude the Crown from exercising its prerogative of entrusting that duty to the Judges. The will and intention of the Crown upon this point, was declared in very plain words in the fourth clause of the Charter, and the power there given, (whether it was or was not meant that there was to be any concurrent power, surviving out of the former Mahomedan government,) was indicated both by the words, and the nature and objects of the power, to be one which was to operate upon all within the sphere of its action, without distinction of persons.

20. A second branch of authority and jurisdiction given by Charter was that of hearing and determining all pleas, real, personal or mixed, respecting things real or personal in Bengal, Behar or Orissa, and all pleas of which the cause should accrue against the East India Company, or any of the King's subjects who should be resident within Bengal, Behar or Orissa, and against any other person who at the time of action brought, or cause of action accruing, should be directly or indirectly employed by or in the service of the Company, or any other subject of the King; and in cases in which the cause of action should exceed 500 rupees, against every other person whatsoever inhabitant of India, and residing in Bengal, Behar or Orissa,

Orissa, who should agree in writing, that in case of dispute the matter should be determined in the Supreme Court; and in such cases it was provided that if the suit should be brought in any of the Courts of Justice already established in the provinces, either party might appeal to the Supreme Court, which might by writ command the parties to surcease proceedings in the Provincial Court, and take upon itself the determination of the suit.

21. A third branch of jurisdiction was that of a Court of Oyer and Terminer for the town of Calcutta and factory of Fort William, and the factories subordinate thereto; and the Charter empowered the Court to try all crimes and misdemeanors committed within the town or factory, and the other factories, and to inquire, hear and determine, and award judgment and execution of, upon and against all treasons, murders, crimes, misdemeanors and oppressions committed in the provinces or countries called Bengal, Behar and Orissa, by any of the subjects of His Majesty, or any person employed by or in the service of the Company, or of any subject of His Majesty, and for this purpose to award and issue writs to the Sheriff to arrest and seize the bodies of such offenders, and to do all other necessary acts.

22. If these parts of the Charter, without a reference to those treaties, agreements and circumstances which we have before noticed, had been strictly insisted upon and rigidly enforced, it seems to us that it might have been very difficult to maintain in law, that subsequently to the 13 Geo. III. c. 63, and supposing the provinces to have become in any manner dominions of the King, there could be any person domiciled within them, unless it might be the inhabitants of the European factories, who were not to be considered for the time at least subjects of His Majesty, and consequently, according to the words of the Charter, amenable to the Supreme Court, both in civil and criminal suits; but by an indulgent construction of the Act and Charter, in conjunction with the agreements which had been made by the Company with the Native Princes, and by supposing that such parts and powers of the old governments still subsisted as were not expressly superseded by the statute or Charter, those who could be considered as living under the protection of the Nizamut or Mahomedan system of law and government over which the Naib Subah had recently been placed, seem, from the first, to have been held upon the grounds which have been already stated, to be exempted from the jurisdiction of the Supreme Court as a Court of Pleas and Court of Oyer and Terminer; but even these were held liable to be summoned and compelled to attend the Court as witnesses, and without such a liability the Court would have been unable to perform many of the important functions expressly and unambiguously assigned to it by the Crown and the Legislature.

23. These complicated circumstances, of which we have endeavoured to present an accurate statement, could not subsist for any length of time in the indistinct form in which they were left without disturbance. Those disputes and disgraceful contests between the Governor and Council on the one side, and the Judges on the other, ensued, on which we wish to make only one observation, namely, that an impression has been created that the Judges greatly exceeded their authority as defined in the Act and Charter, but that we believe it will be found on examination that this was not the case, nor considered by the Parliament to be so; and the Act of the 21 Geo. III. c. 70, in which it was found necessary to provide an indemnity for the unlawful resistance of the Court by the Governor and Council and the Advocate General, made no similar provision for the Judges. The misfortune appears to have been, that the Legislature had passed the Act of the 13 Geo. III. c. 63, without fully investigating what it was that they were legislating about, and if the Act did not say more than was meant, it seems at least to have said more than was well understood.

24. Some important enactments were accordingly made by the statute of the 21 Geo. III. c. 70, as to the powers and jurisdiction to be exercised by the Court in future: First, that the Court should not have any jurisdiction in any matter concerning the revenue, or acts done in the collection thereof according to the usage of the country, or the regulations of the Governor General and Council; and it was expressly declared to be expedient that the inhabitants of the provinces should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges; the Governor General and Council were declared to be a Court of Record, which might lawfully hold all appeals from the Country or Provincial Courts in civil causes, with a further appeal to His Majesty in Council in suits, of which

V. Legislative Councils; Courts of Justice; Code of Laws.

the value should be 5,000*l.* and upwards; that the same Court of the Governor General and Council should hear and determine all offences, abuses and extortions in the collection of the revenue, and punish the same at discretion, provided that the punishment did not extend to death, maiming or perpetual imprisonment; and that the Governor General and Council should have power to frame regulations for the Provincial Courts, which His Majesty in Council might disallow or amend; that no person shall be subject to the jurisdiction of the Supreme Court by reason merely of his holding land, or collecting the revenue from lands held by him, or under him; nor in any matter of inheritance or succession to land or goods, or ordinary matter of dealing or contract, by reason of his being in the service of the Company, or the Government, or of any native or descendant of a native of Great Britain, but only in actions for wrongs, or upon special agreement in writing, to submit to the decision of the Supreme Court. The Governor General and Council were exempted from the jurisdiction of the Court for any act or order done or made by them in their public capacity; and a similar immunity was extended to those acting under such order, unless it shall extend to any British subject, in which case the jurisdiction of the Court was retained. The Governor and Council in other cases continue to be responsible to Courts in England; and provisions were made for the parties obtaining through the Supreme Court copies of any orders complained of, and also having the evidence in India taken by the Supreme Court. Provincial Magistrates, as well natives as British subjects, exercising judicial offices in the Country Courts, were exempted from actions in the Supreme Court for wrong or injury for any judgment, decree or order of their Courts; and the like exemption was extended to all persons acting under such orders; and in case of an intention to bring any information in the Supreme Court against any such Officer or Magistrate for any corrupt act, a certain notice was directed to be given before the party could be arrested, or other proceedings could be taken against him. There was a proviso in the Act, that the Supreme Court should have full power and authority to hear and determine all and all manner of actions and suits against all the inhabitants of Calcutta; but that the inheritance and succession to lands and goods, and all contracts, should be determined by Mahomedan or Hindu law respectively, where the defendant was a Mahomedan or Hindu; that the rights of fathers and masters of families should be preserved; that nothing done according to the law of caste within the family should be deemed a crime; and that the process of the Court should be accommodated to the religion and manners of the natives.

25. It is deserving of remark, that in the statute, although the existence of the Provincial Courts for the determination of civil causes is noticed, and the Governor General and Council are empowered to correct abuses in the collection of the revenue by any punishment short of death, maiming or perpetual imprisonment, there is no Provincial or Country Court of Criminal Justice mentioned; and up to the time at least of that statute, the Supreme Court as a Court of Oyer and Terminer, and the Court of Quarter Sessions, are the only ones recognized by statute as capable, in the Presidency of Fort William, of hearing and determining charges of crimes and misdemeanors against the law, other than abuses in the collection of the revenue. In fact, the present Nizamut Adawlut, and the whole system of Criminal Courts subordinate to it, have not been founded by a power created by the Crown or Parliament; they were referred to in the last statute by which the Government of India was renewed, namely, the 53 Geo. III. c. 155; but they were formed as British Courts by regulations of the Governor General in Council, upon and out of the still subsisting Mahomedan Criminal Courts over which the Naib Subah had presided, and they are a continuance of those Courts in a regulated form, not a new creation. In 1773 there had not been any power created by the Crown or Parliament under which, except for revenue offences, the Indian Governments could establish Criminal Courts subsequent to the Charter of the 10 Will. III., and the powers of establishing Courts given in that Charter seem to have been entirely superseded by the Charters of 1726 and 1753.

26. Since the Act of the 21 Geo. III. c. 70, the jurisdiction which the Supreme Court possessed in Bengal, Behar and Orissa has been extended over all the vast territories which are now under the Presidency of Fort William, and there have been several enactments affecting the Court in various ways; but it is not necessary to state them seriatim. The foundations of its jurisdiction have been shown, and it appears to us: first, the Court has now by law the superintendence and control of the Commission of the Peace throughout every part of the provinces of the

the Presidency of Fort William, in the same way as the Court of King's Bench has it in England; that the power of Justices of the Peace is one which, for the most part, must of necessity be exercised without discrimination of persons, and that the superintending power of the Court is of a corresponding character; that as a branch of the power given to it by the fourth clause of the Charter for the conservation of the peace, and for the kindred object of relief against oppressions, which are immediately consequent upon breaches of the peace, the Court possesses and exercises the power of issuing writs of *habeas corpus* to relieve from false imprisonment; that this power is not locally limited to the town of Calcutta, but is co-extensive with the superintending powers of the Judges, as supreme conservators of the peace; and that inasmuch as British persons at least and natives employed by the Company or the Government, or any other British persons, are liable to be sued in the Supreme Court for trespasses, or indicted for offences committed in the provinces; and that for any corrupt act an information will lie against a judicial officer, whether native of European. It would be incongruous if a writ of *habeas corpus* might not be directed to any of these, if the act complained of should include a continuing and subsisting false imprisonment. With respect also to the natives generally who reside in the provinces under the Mahomedan law and the regulations of Government, it would be uncandid if we were not to admit, that before we saw the decision of the Privy Council upon the petition of Sir John Grant we should have said, upon a mere question of legal construction, that the Court had a right to direct a writ of *habeas corpus ad subjiciendum* to a native, for the purpose of relieving another native from false imprisonment, because we look upon this writ as a branch of the powers given by the fourth clause of the Charter, principally and especially for the conservation of the peace and other objects closely connected with it; and conceiving that those powers must generally extend in law to all classes of persons where they operate at all, we should have been at a loss to find any legal ground for restricting the use of that particular writ in a different way from the exercise of the other powers derived from the same clauses and sentence of the Charter. At the same time we would wish it to be understood, that we have never considered that in such a case the statute of Charles II, would be compulsory upon us, but that the application must be made under the fourth clause of the Charter, and upon the ground of our having a similar power to that which the Justices of the King's Bench have at common law; and as we should always have thought, that in those circumstances we should have had to exercise some discretion, we do not conceive, that we should have issued the writ upon the complaint of a native against a native resident in the provinces, where there was any other lawful power competent and willing to afford more convenient relief. The decision of the Privy Council we receive with the utmost deference, and we are bound by law, and feel every inclination to regulate our proceedings by it; but it is only the more necessary for us, on this account, at a time when we are informed that an act is about to pass declaratory of the jurisdiction of the Court, to point out that questions of difficulty may arise upon that decision. If a British person, especially a Justice of the Peace, or his assistants, should be opposed, and any of them should suffer false imprisonment from a native in the provinces, is the Court without power to relieve them, when, if the party, being a British subject, should apply to the Government, and the Governor General in Council should make any order in support of the native complained of, those at least who should act under the order would be liable, as persons employed by British subjects, to the jurisdiction of the Supreme Court, by the express reservation in the 21 Geo. III. c. 70, s. 3. The jurisdiction of the Court, as a Court of Civil Pleas, since the statute of the 21 Geo. III. c. 70, extends first to the hearing and determining of all manner of actions against the inhabitants of Calcutta, and on account chiefly of the innumerable difficulties which British persons would have to encounter in pursuing their claims in the Country Courts. This term "inhabitants" has always been understood to have been intended by Parliament to comprise all who have dwelling-houses, and carry on trade in Calcutta. Secondly, the Court has jurisdiction over all actions of a transitory nature, and all of a local nature, of which the cause arises in any of the provinces of this Presidency, against any subject of the King residing in these provinces at the time of the cause of action accruing or action brought, or any person residing there, who shall have agreed in writing to submit the matter, in case of dispute, to the Supreme Court, and without any agreement against any person in the service of the Company, or of a British subject, for any wrong or injury; but the whole of

V. Legislative Councils; Courts of Justice; Code of Laws.

this jurisdiction is subjected to exception, that the Court is not to interfere in any matter arising out of the collection of the revenue; and the terms "subjects of the King" is certainly now to be construed with a reference to the considerations before mentioned, and to the provisions in the statute of 21 Geo. III. c. 70, by which it was declared that the Mahomedans and Hindus were to have their own laws, and that there were Courts in the provinces for the administration of them in civil cases, from which the appeal lay to the Governor General in Council. The jurisdiction of the Supreme Court, as a Court of Oyer and Terminer, is established first throughout certain places within which it operates, without any distinction of persons. In practice, these have for many years been considered to be contracted to the limits merely of the town of Calcutta, and any factories which may at any time be subordinate to it, and there is a provision by statute, under which the limits of the town of Calcutta have been settled by the Governor General in Council; but originally the local jurisdiction of the Court of Oyer and Terminer, according to the words of the statutes and charters, included at least a surrounding district, as well as all the outlying factories, and as a legal question, it is not free from uncertainty what the limits are now. Chinsurah in Bengal, and Penang, Singapore and Malacca, stand in this respect in a very singular predicament at present, which will be easily understood by a reference to the statutes which provided for the Dutch possessions that were ceded in 1824 being transferred to the Company, and when in relation to the three last-mentioned places, the fact is adverted to, that the Presidency of Prince of Wales Island has been recently abolished by the Directors, and that the places of which it consisted have been made dependencies of Bengal, but that there is still a Charter of Justice for the Presidency uncancelled, but under which there is no body in India now who is authorized to act. Secondly, the Court of Oyer and Terminer has a power of trying all offences committed by His Majesty's subjects or any person employed by them within the Presidency, or by any of His Majesty's subjects anywhere between the Cape of Good Hope and Straits of Magellan, but in this instance also, the term "subjects," it seems, is to be construed with nearly the same restrictions that have been noticed in speaking of the jurisdiction as a Court of Civil Pleas, although, as it has already been observed, the Criminal Courts in the provinces do not date their origin from any Parliamentary enactments. By the recent statute of 9 Geo. IV. c. 74, ss. 7, 8. 56. 70, provisions are made, without any distinction between native and British persons, for the trial by the Supreme Courts of particular offences, whenever the offender is apprehended or found within the jurisdiction of the Court, although the offence may have been committed elsewhere. In cases of Hindus, however, the Court is forbidden by the 21 Geo. III. c. 70, s. 18, to treat as a crime anything which is done within the family of the party according to the law of caste, and the same statute, by the 8th section, seems to prohibit the Court in its capacity of a Court of Criminal Justice, no less than as a Court of Civil Pleas, from having any jurisdiction, as to anything done in the collection of the revenue, according to the usage or to the regulation of the Governor General in Council. It is not necessary to state over again the powers which are to be exercised by the Court in assistance of the Superior Courts in England, or of proceedings in Parliament; but we wish them to to be borne in mind, more especially for the purpose of showing the necessity which there is, if these duties are to be required from the Court, that its process for the procuring of witnesses and other purposes should be effectual in all parts of the provinces. This necessity, indeed, is found equally in the exercise of its jurisdiction as a Court of Civil Pleas and a Court of Oyer and Terminer, and without a power to take the lands as well as the persons and goods of those who are liable to be sued in the Court, its judgments, in many cases, would require to be aided by the Government, or the Courts established in the provinces, and to make that aid effectual, it ought not to be precarious, but a matter of right. These observations, however, are applicable to the supposition of the Court continuing for the most part as at present constituted; if the alterations recommended in the latter part of this letter should be thought deserving of attention, there would be an opportunity, by means of a Legislative Council, of providing, with the sanction of the Governor General in Council, for the execution of the process of the Court, notwithstanding any contraction of its sphere of jurisdiction. At present there are statutes of later dates than these already mentioned, which have created additional occasions for the exercise of the powers of the Court in the provinces, as for instance, in taking evidence upon Divorce Bills in the House of Lords; and the 26 Geo. III. c. 57, presents cases in which the Court would have to enforce in any part of the Presidency, by

by Exchequer process, the execution of judgments obtained in England. In addition also to these branches of jurisdiction, though it is necessary to abstain from stating them at length, it must not be forgotten that the Court has extensive powers, which must be exercised in the provinces, as incident to its other jurisdictions, especially that of a Court of Equity, and that of a Court for the relief of insolvent debtors.

27. Such, as far as we can conveniently state it in this letter, we conceive to be at present the power and jurisdiction of the Court according to law; and if it should be thought right, either by a declaratory statute or by new enactments, to take away any part of it, or to correct the mistaken supposition of its existence, we hope it will not be forgotten that distinct provisions ought to be made by which it may appear how the same objects are to be accomplished, and the same occasions are to be answered by some other tribunal or power. We have next to advert to various circumstances which, in some respects, have thrown doubt and obscurity upon the jurisdiction of the Supreme Court, which in others impede its powers, and in many make it doubtful whether the exercise of them be productive of good or evil.

28. The Court was founded with views which have never been accomplished, and many of the original provisions are necessarily ill suited to the state of things which has ensued, so different from that for which they were intended. It appears to have been thought by those who framed the statute of 13 Geo. III. c. 63, that by opening a Court of British law, and by giving to Government and the Court together a power of making regulations, all the British possessions and system of Government, and the whole people, might have been gradually brought to range themselves in subordination to that Court and Government, in a state of union; but from a train of circumstances, which need not be discussed here, the Court and Government were very soon placed in a state of opposition, and the inhabitants were studiously divided. The jurisdiction which the Court has subsequently exercised has always been essentially of a very peculiar character, and has had many difficulties inseparably connected with it. It is an exclusive personal jurisdiction as to a particular class, thinly scattered over a wide extent of country, amongst a dense population, who are considered to be themselves, for the most part, exempt from the jurisdiction and to live under a very different system of law. In every part of these territories, nevertheless, the process of the Court must be enforced, and even lands must occasionally be seized and divided or sold, although there is an absolute prohibition against the jurisdiction being exercised in any matter of revenue, which revenue is, in fact, a share, and a very large one, in every parcel of land throughout the Presidency.

29. These difficulties are aggravated by an obscurity which has been permitted to hang about the relations in which the Indian territories and the Company stand to the Crown and Parliament. Our own view is plainly and simply that the bulk of the Indian territories must be considered as having been annexed by conquest and cession to the Crown of the United Kingdom, but subject, of course, to the observance of all treaties, capitulations and agreements, according to the real intent and meaning of them, which have attended any cession, and which still continue in force; that to a certain extent British law has been introduced, but that, on the other hand, a very large portion of the old laws of the country have been left standing, though under the administration of British persons, the leading distinction being that British law and British Courts have been introduced for British persons, and Mahomedan Courts and laws permitted to remain for Mahomedan and Hindu persons; and these Mahomedan laws and Courts have been subsequently modified by a certain legislative or regulating power, which itself also has been a continuation of the old legislative powers of the Native Government, permitted, and in some instances recognized, by Parliament. The sovereignty of the Crown of the United Kingdom we hold to be established throughout all the provinces which have been formally annexed to the Presidencies, and as an incident of the sovereignty, that the King in Council has in some cases the actual exercise, and in all the right, whenever the Crown may see fit to exercise it, of deciding upon appeals in the last resort, and superintending the administration of justice; that the Imperial Parliament has as absolute a right of legislating for all purposes as in the United Kingdom itself; but that the East India Company, in consequence of a long chain of events, being the most convenient depository and organ of the powers which it is necessary should be in action upon the spot, have had the Government principally entrusted to them; and being thus put in the place of those parts of the old Governments, by which the ancient and still

V. Legislative Councils; Courts of Justice; Code of Laws.

subsisting laws and legislation of the country were wont formerly to be carried on, they exercise, through the Governors in Council and their officers, not only the functions specifically assigned to them by the Crown and Parliament, but some powers also in the administration of justice and in legislation, which, as we have already explained, are not, strictly speaking, derived from the Crown or Parliament as their origin, but are portions of the old institutions, which have been permitted by the Crown and Parliament to continue, and have been by Parliament entrusted for limited periods to the management of the Company, and recognized as subsisting in their hands. Excepting any formal questions which may arise out of the titular honours and nominal authority enjoyed by any Native Princes within the Presidencies, there are only two points on which, as far as we are aware, any positively different opinion exists. It seems to have been thought by some that the Company's powers of political government rest at present, not only upon the statutes by which they have latterly been entrusted or continued to them for limited periods, but also on those parts of the Charters of 1698 and 1726, by which they were authorized to coin money, and maintain troops, and do other acts which belong purely to political government; whereas we should be of opinion that such powers of political government as were given by the Charter for the maintenance and protection of the exclusive trade, have been merged and extinguished in the larger powers which have been given by statute for the purposes of dominion, and that there cannot now be any occasion upon which those minor powers would revive, although the Charters are not on that account the less valid and effectual to secure to the Company, at all events, their corporate capacity, their property of every sort, and their right to trade in common with other British subjects. Secondly, there is a notion which, we are inclined to think, has arisen merely from the indistinct use of a particular term; and in adverting to it, we are anxious to guard against the supposition of our having experienced any difficulty from any expression of it by those with whom our duties have brought us into intercourse. But amongst those who have treated of the subject, some certainly speak of the Company as having "*succeeded*" to the powers of the old Native Governments, and seem to found a certain claim of right upon this notion of succession; whereas we apprehend that, although to a certain extent the Company does hold the place of the old governments, it is not by any succession, as distinguished from acquisition, but that, having been the instrument and agents of conquests, or the means through which cessions have been obtained, and having come into possession in that way, they have been permitted to retain it for a certain term, by the enactments of Parliament. We may, perhaps, be in error in supposing that any consequence is attached to this distinction; the subject, however, has been so little brought forward, that the circumstance of the Crown and Parliament having exercised little or no control over some parts of these judicial and legislative powers, which have survived the old government, has been followed by an indistinctness of apprehension as to the real nature of them. The President and Board will remember, that it has heretofore been made a question, whether the Company had not, what has been called, in terms not very easy to be understood, a delegated sovereignty; at other times it has been alleged that the Mogul Emperor still retained a nominal and formal sovereignty. Some have suggested doubts whether the continuing possession of the Company, notwithstanding its being a creation of the British Crown and Parliament, is not a mark that the Indian territories have never yet been reduced into possession by the British Crown. It cannot be necessary to show, in detail, that any doubts upon points, such as these, wherever they may exist, or upon whatever occasions they may be stated, must be a source of embarrassment to Judges who have to issue process and execute judgment in the King's name, in all parts of the provinces, who may at any time be called upon to ascertain the rights in India, not only of British persons, but of the subjects of the Christian powers in amity with the British Crown, and who, in law, are supposed to have the control throughout all parts of the Presidency of the Commission of the Peace. Questions arising out of the most important statutes, such as the Navigation and Registry Acts, the Meeting Acts and others, exist in an undecided state, and are scarcely prevented, but by management, from being brought forward for decision, which, whenever it is called for, must turn mainly upon the species of relation in which the Indian territories and the Company stand to the United Kingdom. Some of the most important regulations of the Indian Government have been made without the direct or express authority of Parliament, and are most easily justified, as being the exercise of the old legislative powers of the former governments not superseded, and therefore continuing to subsist. Some

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of the regulations, about 1793, were of this description. The imposition of taxes in the provinces is perhaps an instance, and it is a power which might come to be a subject of serious discussion, and, if British persons are to be admitted to hold lands throughout India, of vital importance.

30. An offspring of the uncertainty alluded to in the last section is the peculiar use which has been affixed to the terms "British subjects" in the Statutes and Charters relating to India, a source of difficulties to the Court which does and will increase. The corruption of the legal signification of these important terms, seems to have originated in the difficulty which was felt in getting over the provisions of 13 Geo. III. c. 63, and of the Charter of Justice, by which the English laws were, in words, extended in these provinces to all His Majesty's subjects. The Directors, in their letter of 19th of November 1777, to Lord Weymouth, asserted that the natives were not British subjects; but, notwithstanding all the difficulties of the times, and that the Ministers were pressed by the calamities of the American war, this point was not acknowledged even in the statute of 21 Geo. III. c. 70, though expressions and clauses were allowed to be introduced in the statute, from which the result has been, that it is impossible to say who were and who were not meant to be designated by those terms. Subsequently, as the British Governments in India proceeded in organizing the judicial system for the provinces, including Criminal Courts, it became necessary that they should describe the natives as subjects at least of the British Government, and as owing allegiance to it. Under all these circumstances, if the question had been raised in any English Court of law, there would have been some difficulty in maintaining that the natives did not at any rate fall under the terms "subjects of His Majesty," wherever those words occurred in statutes relating to India. A direct decision, upon that question, however, has been avoided; and to meet the difficulty, and with a view, perhaps, to other consequences, a distinction has been set up between "British subjects," and "subjects of the British Government;" and it is maintained that generally where the term "subjects" occurs in the Indian statutes, it means "British subjects," and does not include those who are only subjects of the British Government. There is no stable nor sufficient foundation provided for this construction at present; for whatever restrictions the Parliament may think it right at any time to put upon their rights as subjects, it is certain that if the case of the *post nati* of Scotland, and that of *Campbell* v. *Hall*, are of any authority, and if any of the Indian provinces have become British dominions, all who are born within them are British subjects according to English common law, even though the Indian territories should be so far a distinct realm as to have a separate but subordinate right of legislation, and of holding Courts for the administration of justice. The distinction between British subjects and subjects of the British Governments in India, has never, we believe, been formally declared in any Act of Parliament, but depends upon an ill-defined supposition of the continuance of the Mahomedan laws, and upon inferences to be drawn from the use of the term "British subjects," in several Statutes and Charters relating to India, especially the 21 Geo. III. c. 70, and the Charters of the Madras and Bombay Courts, and upon a fluctuating usage, so that it is quite impossible to say with any just confidence who they are who belong to the one class and who to the other. It seems to be agreed, indeed, that the terms "British subjects," as they must necessarily include all persons born in Great Britain, or whose fathers or paternal grandfathers have been born there, so they do not include any Mahomedan or Hindu natives of the Indian provinces who are not inhabitants or natives of Calcutta, Madras or Bombay, or any other place distinctly recognized as a British settlement or factory; but between these two extremes there are many doubtful classes. Even the natives of Ireland would not necessarily fall under the terms "British subjects," as used in 21 Geo. III. c. 70, s. 10. It is understood that the lawyers of the East India Company have been of opinion that persons born in the British colonies are not, according to the use of the term in the Indian statutes, "British subjects" by reason of their birth-place, nor unless they are descended from a British born father or paternal grandfather. The natives of Jersey and Guernsey have not so strong a claim as those Christian persons born in Calcutta, Madras and Bombay, but not resident there; and Hindus and Mahomedans, under similar circumstances, are liable to still more cogent doubts. Do either Hindus and Mahomedans, or Indian Christians born in the provinces, or Christian foreigners, because temporarily British subjects while domiciled in Calcutta, Madras or Bombay, so that for offences committed beyond the boundaries

V. Legislative Councils; Courts of Justice; Code of Laws.

they would still be amenable only to the Supreme Court? Are the native Christians or the subjects of Christian Princes in amity with the Crown, who may reside in the provinces, to be classed with Mahomedans and Hindus, or with British subjects? What is the effect of the subsisting treaties with France and other Christian States in this respect? These and many similar questions do every now and then arise, and it is only by perpetual contrivance that they are prevented from becoming more troublesome. The statutes and Charters relating to India present various appplications of the terms in question, and in several important instances the terms "subjects" is used by itself, and it is mere speculation and controversy whether the adjunct "British" is to be understood or not. These distinctions are the more embarrassing, because the continuance of the Nizamut, which afforded some sort of explanation of them in Bengal, Behar and Orissa, cannot be alleged in respect of other parts of India, many of which have come under the sovereignty of the British Crown by a course of circumstances which have left no shadow of any former sovereignty lingering behind, and which present no alternative but that persons born there must be subjects of His Majesty in right of the British Crown, or subjects of nobody at all.

31. The circumstance which perhaps more than any other has contributed to make the jurisdiction of the Supreme Court inconvenient, and which is perpetually brought forward as making its unfitness for the duties assigned to it, is not a vice of its original constitution, but the extension of its legal authority over the immense territories which have been subsequently added to the Presidency of Fort William. It was not, perhaps, impossible that the Court might have been made competent to exercise an effectual and salutary jurisdiction throughout all Bengal, Behar and Orissa, which comprise the whole space to which its powers at first extended, but it never could have been made convenient by any ingenuity of legislation, that its powers of original jurisdiction should be exercised even as to British persons throughout the present Presidency of Bengal, of which some parts are nearly a thousand miles distant from it, and where the means of communication are not so easy as in England; and as there has been an inclination rather to clog the powers of the Court than to invigorate them, it may easily be conceived that when called into exercise in a weak and shackled state upon so vast an area, they are at once ridiculously important, and yet very weak in the way.

32. It appears to us to be matter for regret that there has never been any plan avowed and distinctly laid down for the gradual assimilation and union of the two systems which it has been thought necessary, and which to a great extent it seems to be still necessary to maintain, for the British and the natives respectively. In 1773 there seems to have been at most only a temporary obligation to preserve any of the Mahommedan forms of Government, and they have by degrees been almost obliterated, but what has come in place of them rests partly on the old basis, and there are still two systems scarcely less averse in principle than at first, working with discordant action, and within the same space. Nothing would be more unreasonable than to attempt to impose upon India generally the British laws as they exist in the United Kingdom, or even in Calcutta; but we are confident that before this time, if there had been a hearty co-operation of all parts of the Indian Governments, one uniform system, not English yet not adverse to the constitution of the United Kingdom, might have been established in some provinces, to which both British persons and natives might have accommodated themselves, and which would have been fitted at future opportunities to be extended to other districts. This would have been done, if the whole legislative and judicial powers of Government had been under one control. But this has never been the case. The regulations of the Government for the provinces, and civil causes tried in the Provincial Courts, where the matter in dispute is of a certain value, are nominally subjected to the control of the King in Council as much as regulations which are registered in the Supreme Court, or causes heard there; but it is scarcely more than in name that this exists, and with the exception of a few appeals in civil cases, it may be said that the legislative and judicial functions of the Indian Government in the provinces, extensive and active as they are, and including the whole process of criminal law, are exercised under no other control than that of the Directors and the Commissioners for the affairs of India, whilst the administration of law for British persons in India is in theory independent both of the Indian Governments, the Directors and the Board, and British subjects who choose to abide at the seats of Government cannot be directly subjected to any legislation but

V. Legislative Councils; Courts of Justice; Code of Laws.

but that of Parliament, or regulations registered in the Supreme Courts. In these circumstances, it has naturally been the inclination of those who have had the principal influence in Indian affairs, to build separately upon the foundations of that system which is the most subjected to themselves, and as it were belongs to them, rather than to bring the remains of the old institutions of the country into any subordination to Courts established upon the basis of Parliamentary enactment, and in many respects certainly ill adapted to the circumstances of the country. Thus two principles of Government have been maintained in a sort of antagonism, which thwarts and weakens each, and is not in any way advantageous to either. If the one was to prevail even to the exclusion of the other, the result must be an interference of the Imperial Legislative to reduce the Indian territories to their true relation with the United Kingdom, that of distinct, but entirely dependent dominions, with peculiar though not adverse laws, separate but entirely subordinate powers of internal legislation, and an administration of justice always liable in all its branches if not actually subject to the superintendence and control of the King in Council, or some other Court of the United Kingdom, or at least of some Court constituted by the Crown. Why should not the most convenient district that can be named in these vast territories be set apart for the purpose of forming upon this basis one harmonious system, suited to all classes of persons, and compounded of the two jarring ones which at present divide the people, debilitate the administration of justice, and harass the Government. It has been said that this would be like breaking off a part of the mass for the purpose of making experiments upon it; but every body seems to be agreed that something must be done. We disclaim all thought of proceeding otherwise than with the utmost caution, and we seem to differ from those who are adverse to the selection of one province principally in this respect, that we think it wiser to attempt the introduction of a better system upon a small scale at first, and in that place only where all the force of Government may be most readily applied in its support, and where its progress would be most immediately subjected to the presence and inspection of those who must direct it.

33. The next head of difficulties is one of which we feel considerable difficulty in speaking. But our motives, and the necessity of exhibiting the whole of the case, must be our apology for saying, that some of the inconvenience to which the Court is subjected, and some of which it is the apparent cause, are attributable to the imperfections of the Acts of Parliament and Letters Patent under which it has to act, or by which it is affected. It would seem as if, either from the intricacy of the subject, or an apprehension that difficulties would be encountered in Parliament when modifications of the powers of the Supreme Court have been desired, they have been sought not by positive and plain enactment, but by the introduction of something in an Act or Charter which, without being likely to excite too much discussion at the time, might be available afterwards as showing an intention on the part of the legislating power to make the required provision. Nothing can be more vague in most respects than the important statute of 21 Geo. III. c. 70; it provided that persons should not be subject to the jurisdiction of the Court for this or for that reason, but left it nearly as open to argument as it was before, whether all those must not be held liable who could be shown to be subjects of His Majesty; it left in the hands of the Government powers of general legislation, and of life and death, which it did not notice, while it specifically imparted to them limited powers of making regulations, and inflicting in certain cases punishment short of death. It employed the terms "British subjects" and "European British subjects" in such a manner, that it is impossible to say what was really meant by them; it impressly left to the Supreme Court the determination of all suits respecting the lands of certain classes of the natives, yet forbade it to exercise jurisdiction in any matters connected with the revenue, which is a part of all land throughout all India; and, finally, it made certain provisions for registration, which were palpably impracticable from the first, and were scarcely attempted to be carried into execution. We would rather not go through the insidious task of pointing out the indirect and inconclusive, but not therefore ineffectual provisions of later statutes; but we can scarcely avoid to notice some of the variations which have been introduced in the Charters of the Supreme Courts at Madras and Bombay, and the doubts and difficulty which arise out of them. The Acts of Parliament which directed the issuing of these Letters Patent provided, that they should confer the same powers on the new Courts as those which were possessed by the Court at Fort William; but notwithstanding this, the powers

V. Legislative Councils; Courts of Justice; Code of Laws.

granted are materially different. To pass over the differences as to the appointment of Sheriffs, and the admission of barristers and attornies, it will be found that in the definition of the jurisdiction of the more recent Courts, there are words which purport to restrict their powers generally to such persons as have heretofore been described and distinguished by the appellation of "British subjects;" whereas, as it would have seemed to us, the powers which the Justices of Peace and the Courts were to possess in the provinces as Conservators of the Peace, and as presiding over the Commission of the Peace, whether the criterion of their extent was to be the extent of those granted to the Court at Fort William, or the possibility of their being used to any good purpose, must be exercised, if exercised at all, without distinction of persons. Again, the Bombay Court is prohibited from interfering in any matter concerning the revenue even within the town of Bombay, which is directly opposed to the 53 Geo. III. c. 155, ss. 99, 100. Then all natives are exempted from appearing in the Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in what is called a Native Court. This would for many purposes place the Court entirely at the disposal of the Government, who regulate the usages of the Country Courts as they please, and whether any suit arising beyond the limits of the towns of Madras and Bombay should be determined at all, or whether any offence committed there should be punished by the Court, or whether it should be able to collect evidence in aid of any proceedings in England, would come to depend entirely upon the pleasure of the Government. Whether this would be right or not is not the question; it is inconsistent with the duties assigned to the Courts by subsisting statutes. In the clause which purports to define the Admiralty jurisdiction of the Court at Bombay in criminal cases, its powers are restricted to such persons as would be amenable to it in its ordinary jurisdiction, which is again at variance with the 53 Geo III. c. 155, s. 110, if it is to be understood from this passage in the Charter, that the jurisdiction was meant to be limited to such persons as have been usually described as British subjects; but it is not very clear what is to be understood by ordinary, as opposed to any extraordinary jurisdiction of the Court, and this indeed is another species of the defects which we are noticing, namely, that limitations of the jurisdiction have been thus introduced by allusion rather than plain declaration. In one way or another, sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions, which to persons unacquainted with India may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established upon the same footing as the old one, by something finding its way into the constitution of the new Courts, which is essentially different from the old, and would be destructive of their efficiency. In some or all of these ways the Supreme Courts have come to stand at last, in circumstances in which it is a very hard matter to say what are their rights, their duties or their use.

34. Though we attribute the principal imperfections and inconvenience of the Supreme Court to the sources which we have described, we have already intimated that there were inherent and almost insuperable difficulties connected with its original constitution, and the circumstances with which it has always had to deal; and we by no means intend to assert, that there have never been any faults on the part of those by whom the duties of it has been conducted. The application of the forms of British law to the settlement of differences amongsts the Hindus and Mahomedans, even of Calcutta, is full of difficulty; the Hindu laws especially are one of those ancient systems which have existed, in a certain stage of society, all over Asia, and a great part of Europe, and of which the main spring has been the influence of the priesthood. When this has been removed, and laws, which were calculated to be maintained by persuasion, by sacerdotal influence, or religious awe, have to be enforced by means of English Courts and lawyers and the legal process of writs of execution, it is scarcely possible that the machinery should work well. This remark is peculiarly applicable to the family quarrels of the Hindus; but the inconvenience, great as it is, seems to be necessarily connected, for a time, with

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the marvellous position in which England is placed in relation to India. The ordinary state of a Hindu family, in respect of property, is that of coparcenary between the males; but any one member has a right to claim a partition. Upon the death of a Mahomedan, his property, including land, is shared amongst his relations, according to peculiar rules, which make it necessary, for the purpose of calculation, to consider it as subdivided into very minute portions. The mode of settling all cases of this kind in the Supreme Court is by suits in equity; and it may easily be imagined, that trouble, expense and delay must attend such proceedings, in which innumerable papers and accounts of many years standing, in three or four languages, must be produced, translated, given in evidence, and investigated, and in which, after all the other difficulties have been overcome, the decrees of the Court, including partitions of interests in lands, and consequently, the inspection, admeasurement, valuation and allotment of the lands are to be carried into execution by the European officers of the Court in the provinces, where the uncertain interests of many parties, not included in the suit, are involved in the same parcels of land; where the Court is prohibited from interfering, in any way, with a revenue which is intimately and inextricably mixed up with every piece of land; and where the Court is also regarded somewhat in the light of an intruder, or, at least, a necessary evil, by the civil officers of the Government by whom the provinces are managed. Add to this, that when once dissension has arisen in a native family, nothing can exceed the perverseness with which their disputes are carried on. The object is no longer to obtain their rights, but to ruin each other. Sometimes they will make a truce for years, and then revive their contentions with fresh zeal. At all times they are represented to be difficult to deal with as clients, and, from understanding imperfectly the proceedings of an English Court, to be obstinate and suspicious. Besides, it cannot be expected that any class of the professional persons by whom the business of the Court is to be conducted, should in general be quite equal, in all desirable qualifications, to those who exercise corresponding functions at home. It will not be supposed that we mean to make any exception, in this remark, of the higher offices, which at present are held by ourselves; but we have in view principally the conduct and management of suits involving an intercourse with native clients under circumstances which are much more difficult, and much more opposed to an accurate and beneficial exercise of the legal profession than any that occur at home. In almost all suits for partition amongst native families, there is another difficulty from the Court having to regulate the disposition of funds appropriated to the superstitious uses of their religions. Again, some of the longest, most intricate and expensive suits in the Court, have been occasioned by the charitable or religious bequests of Christians of the various sects which exist in India. In these, some of the Supreme Courts have been called upon to apply money to the benefit of Roman Catholic establishments at Goa, in others to Greek or Armenian churches on Mount Lebanon, and to settle disputes between rival establishments of Capuchin Friars. A commission has been prayed to inspect the records of the Vatican. One highly important case which long has been, and still is, before this Court, and which there is little doubt will ultimately come before the King in Council, presents the following circumstances: A Frenchman by birth, not outwardly professing any religion in particular, and who had for some time resided, and at last died at a very advanced age in the territory of Oude, which is, according to treaty, the separate dominion of a Mahomedan King, leaves great wealth, a part of which is in land; part of which at the time of the death is in France, part within the kingdom of Oude, part in the provinces or Mofussil of the Presidency of Fort William, and part within the town of Calcutta; some of the personal property is vested in public securities of the British Government in India, and some in the English funds. By his will he bequeaths legacies and landed estates to relations in France, and gives pensions for life to a set of native concubines and servants in Oude, makes large charitable bequests to the city of Calcutta, and the city of Lyons in France, involving the establishment of public schools at both places, to be continued for ever; and directs also the establishment of what he calls a college, but which is to be connected with a sort of caravanserai, where his tomb is to be lighted and watched, in the foreign and Mahomedan capital of Lucknow; and after providing for all these, there is likely to be a very large residue, respecting which, his directions are very inexplicit, and to which, when they can be found out, the next of kin of a man who had left France in a state of poverty 60 years before, and who had no kindred in India, have a dubious claim; and there is landed property in Calcutta, to which his heir-at-law, when discovered, may also make a claim; and this

V. Legislative Councils; Courts of Justice; Code of Laws.

this heir, according to the English law, is not one of the next of kin, who are only of the half blood. The case is not brought into the Court until the assets have been many years in the hands of a mercantile firm, and are involved in a maze of accounts; once brought before it, however, the Court cannot decline to proceed, yet is only enabled to proceed in respect of the public charities at the instance of the Advocate General of the Company, whose official relations are in some respects calculated to embarrass his proceedings. When such circumstances may occur, and when it is recollected that the Court has no less than seven jurisdictions combined, as a Court of King's Bench, a Court of Civil Pleas, a Court of Oyer and Terminer, a Court of Admiralty, a Court of Equity, an Ecclesiastical Court and a Court for the relief of Insolvent Debtors, it will not perhaps be thought surprising, if complaints against it should sometimes arise out of the disputes of the suitors; except, however, in equity cases, there is no ground for any complaint of delay in the determination of suits; nor even in equity has the delay been at any time ascribable to the Judges. There are no arrears in any causes which are before them, and there scarcely ever have been any. The heaviness of the costs in some equity suits we have no doubt is an evil, though perhaps not greater than in England; and it will not be found to arise so much out of any particular fees, as from the misconduct or miscarriage of the equity suits, attributable, in a great degree, to the difficulties which we have noticed, but arising partly no doubt in some cases from the inattention or unskilfulness of professional men, and still more, perhaps, from the waywardness of the native clients. If we were called upon to devise a remedy for such evils upon the supposition of the continuance of the present constitution and jurisdiction of the Court, we do not know that we could suggest any other than a reform of the system of equity pleading and practice, a settlement of all bills of cost at stated periods of the year, by the Judges themselves, accompanied by a judicial examination into the conduct of each suit, a division of labour and allotment of business amongst the Judges, by which a more rigid discipline, if we may use the expression, in the conduct of the whole business of the Court might be enforced, and, perhaps the establishment of a practice, by which the Judges might endeavour to arbitrate between the native suitors before they were fully committed in a suit.

35. We have now, however, in pursuance of the wish expressed in your letter to submit to the consideration of the President and Board, a general view of such arrangements as, in our opinion, would put the administration of the law in India upon a better footing. If we bring forward considerations, which at first may appear to belong rather to policy than to law, we trust it will be perceived that this is rendered necessary by the unusual circumstances of the case; for nearly all the difficulties of it arise out of a peculiar policy, by which the laws in India have been made personal in their application, instead of being, as in most other parts of the world, local. This circumstance occasions unfortunately a certain difference of opinion, which will be noticed in a subsequent part of this letter, between the two who sign it. We are sensible also that by reason of political measures being thus necessarily involved in our recommendations, we run the risk of suggesting what may be at variance with views already formed, or with transcendant considerations of general policy, of which we have no information. This is a disadvantage for which we have no other help than to beg, that what we offer may be received as it is offered, in the light of very humble suggestions, tendered with much distrust of our own judgments, and with no other desire than to assist His Majesty's Ministers as far as we can in arriving at just conclusions of what is best to be done. Our observations are made upon the supposition, that India remains under the Government of the Company, subject to the control and regulation of the Crown and Parliament in all affairs of government, whether executive, judicial or legislative.

36. It appears to us to be desirable, that all the territories which are permanently annexed to any of the three Presidencies, and in which justice is administered and the revenue is collected and expended by officers of the British Government, should be declared, in the most unambiguous manner, to be dominions of the Crown of the United Kingdom, that all persons born within the same are subjects of that Crown, owe allegiance to it, and are entitled to protection from it; and that all persons residing there owe that temporary allegiance which would be due from them if resident in any other dominions of the Crown; and we have some confidence that within the provinces which constitute the three Presidencies, there are no subsisting rights of Native Princes, which would present any real obstacle to the adoption of this measure. It is a step, however, which would not perhaps be taken by

V. Legislative Councils; Courts of Justice; Code of Laws.

by the British Parliament, if it were to be considered as securing to the countless population of India the rights of natural born British subjects. If the Legislature should not be satisfied by that exclusion from certain rights, to which all the unchristian natives would be subject as the law now stands, it might be necessary to enact, that the natives of the British territories in India shall not, by reason merely of their birthplace, be entitled, when resident within the United Kingdom, or any of the dominions of the United Kingdom other than the Indian territories, to any rights or privileges as subjects, beyond what would be allowed to the subjects of friendly foreign states, and that they shall be distinguished by the name of Indian subjects of the Crown of the United Kingdom; with a proviso, that all persons born in India, whose father or paternal grandfather shall have been British subjects, and all other persons who according to law would be natural born British subjects if born in any foreign state, shall equally be natural born British subjects if born within the British territories in India. If such provisions would have the effect of depriving any classes of the Indian natives of rights to which they may at present be entitled as natural born British subjects, the distinct acknowledgment of their being at least subjects and entitled to protection, and the foundation which would be laid by the provisions hereinafter mentioned for their enjoyment in a part of India of legal rights, would appear to us to be more than adequate compensation for anything which would be justly said to be taken away.

37. It is at this point that the difference of opinion to which we have already alluded as subsisting between us, must be noticed. Sir Edward Ryan thinks decidedly, that whatever ameliorations of the law and administration of justice are to be adopted, ought not to be limited, even at present, to what he considers to be so inconsiderable a portion of the territories annexed to this Presidency, but that it might be left to a Local Legislature to determine over what extent of territory any improved system might be established; and this opinion would apply equally to the admission of British persons to hold lands. In the whole of the preceding portions of this Letter, Sir Edward Ryan entirely concurs, and, with the exception above stated, he agrees in what follows; which, however, in consequence of that exception, must be expressed principally as the opinion of the other Judge, who recommends that a certain district around Calcutta, as the present seat of Government, should be formed into a separate province; and that for the government of this district only there should be, to a considerable extent, a separation of the executive, judicial and legislative powers of government, by means of a Legislative Council, and a Court of Appeal or Council of Judicature being added for that purpose to the existing political body of the Governor General in Council, within this province. All subjects of the Crown of the United Kingdom, as well British as Indian, without any distinction, might have the right of purchasing, holding and inheriting lands, and the laws throughout that district should be rendered as inviolable, and the administration of justice as regular, and the security of person and property as perfect as possible; and it is obvious that more would be possible for such a district, than either for the whole of India, or for a single town only like Calcutta. It is not meant that the English laws should be established, but that, subject to certain restrictions, a system should be adopted by the Legislative Council to the whole circumstances in which the province would be placed, and which system should secure more rights to the people, and should be more certain than any it is at present possible to give to the whole of India, which, taken altogether, constitutes a subject vast, various and unsettled, that it is scarce possible to frame any law, which, if really intended to be enforced, can be universally applicable, or which, if established to-day, may not be shown to-morrow to require modification. For such a province the Delta of the Ganges, or the territory lying between the western or right bank of the Bhagheruttee and Hooghly River, and the eastern or left bank of the main stream of the Ganges, would be well situated and of a convenient size, and it has a peculiar advantage in a well defined boundary; but any other portion of the adjoining country, of which the circumstances might be thought to require it, might even at present be included.

38. It might be declared, that the rest of the territories of this Presidency, although they be the dominions of the Crown, and the inhabitants be subjects thereof, yet by reason of their magnitude and great population, and the various customs and habits of the people, and the obscurity of the customary interests in land and other circumstances, they cannot for some time to come be adopted throughout their whole extent to an equally regular and fixed system of Government, and for

V. Legislative Councils; Courts of Justice; Code of Laws.

these reasons the whole government of the same might be declared to be vested as before in the Governor General in Council, subject to former restrictions and qualifications; and it might be provided that whenever persons should choose to abide in, traverse or enter the said territories, they should be liable to the laws and regulations in force there, and to the authority and powers of the Governor General in Council, in like manner as any of the Indian subjects of the Crown would be, and that neither the Supreme Court nor any of the other Courts established or to be established within the provinces of Calcutta should have any jurisdiction whatsoever, or exercise any authority, powers or process whatever within any of the said territories, other than such as hereinafter are expressly and particularly mentioned; but that in all other cases whatsoever, when it should become necessary for giving effect to any decree, judgment or order of any of the said Courts, that the lands, goods or body of any person should be seized and taken upon any mesne or final process within the said territories, it should be done by such ways and means and in such manner and form, and according to such regulations as should be provided for that purpose by the Governor General in Council. If British persons could be contented to inhabit the provinces upon these terms, they might be permitted to do so. The necessity of the case seems to require, as to the greater part of India, that the Govenor General and Council must have within themselves all legislative, judicial and executive powers, subject to no control but by the superior authorities in England, and it would be scarcely possible in the present state of things to make any laws or regulations for all India, which it might not become necessary the next day to disregard. But if the Parliament, clearly understanding and being prepared to adhere to this, should choose to put all the subjects of His Majesty, of whatsoever description in the provinces, upon an equal footing in relation to the law, there would not perhaps be any violent danger to the state to be apprehended, nor any oppression of the natives, which the Government might not be able, by a stern exercise of its power, to restrain. There are however, two things which it does appear to be desirable to guard against in any general admission of British persons to the provinces: First, that of giving rise to a delusion that there are the means at present of establishing and enforcing throughout all India such an administration of law as that it might be profitable and advantageous to British persons, whether companies or individuals, to lay out money in landed estates and to engage in speculations throughout the provinces; this might be followed by great disappointment and discontent. Secondly, no opening nor pretence should be left for subsequent irritation and clamour, on the part of British persons, upon the grounds of their not enjoying the personal rights of English law. If the provinces are to be opened to them, let it be universally understood so, that no doubt may remain, nor any ground for subsequent reproach that they go to live under a despotic and imperfect but strong Government, that they carry with them no immunities or privileges but such as are enjoyed there by the natives themselves, and that it is impossible at present to give them either that security and easy enjoyment of landed property, or those ready remedies for private wrongs, or that independence of superiors which more readily constituted governments afford. A tolerable system of criminal judicature, we believe, might even at present be established throughout the greater part of India, and that at the principal stations Jury Courts might be established.

39. The Supreme Court, besides being restricted from exercising within the territories lying beyond the boundaries of the province of Calcutta any other jurisdiction than such as is hereinafter expressly mentioned, might likewise altogether cease to be a Court of original jurisdiction within that province, except in the cases hereinafter particularly mentioned, and the authority, powers and jurisdiction of the Court might henceforth be as follows: First, that within and throughout the provinces of Calcutta it should have a complete superintendence and control over all other Courts and Magistates. Secondly, that no sentence of death by any other Courts of the province should be executed without the warrant of the Supreme Court, and that it should have an original and exclusive jurisdiction as to all those offences which, for distinction, are called offences against the State, and are of a treasonable or seditious nature, if committed within the province of Calcutta. Thirdly, that it should have an original jurisdiction as a Court of Chancery as to all conveyances or devises of land or gifts, or bequests of money for charitable or religious purposes, or other permanent public objects. Fourthly, that it should have

have an original Admiralty jurisdiction as to all crimes maritime punishable with death, and the King's Commission of Vice Admiralty for the trial of prize causes should be directed to the Judges of the Court; but this perhaps could not be enacted by Parliament without touching the prerogative, and must be left to the pleasure of the Crown. Fifthly, that it should be a Court of Appeal from the Courts of the province of Calcutta. Sixthly, that it should have the powers of the present Supreme Court for the collection of evidence in India in criminal prosecutions before the Parliament or the Superior Courts in England, and for giving effect in India to the judgments of those tribunals. Seventhly, that it should be lawful for the Governor General by commission to authorize and empower any one or more of the Judges of the Supreme Court of Appeal or Members of the Council of Judicature to exercise any judicial function, either original or upon appeal, or by way of inquiry, within the territories lying beyond the boundaries of the province of Calcutta, and respecting any matters arising within the same, whenever the importance and exigency of any case might require it.

40. That a Legislative Council should be established for the province of Calcutta. Our views as to the formation of such Council have been already stated in a communication made to the Governor General in Council. We would only add here, that, consistently with the scheme presented in our present Letter, the right of legislation of the Council would be restricted to the province of Calcutta, but that it might be employed for the other territories whenever the Governor General in Council should think it expedient. If the additional charge upon the revenue would not be an objection, the Members of the Legislative Council might be entirely distinct persons from those of the Council of Judicature or Court of Appeal; and at all events, we should propose that the Governor General should have the right of presiding in the Legislative Council, and that nothing should be enacted, even for the province of Calcutta, without his consent; nor should we see any decisive objection against his presiding also, by appointment of the Crown, in the Council of Judicature or Court of Appeal, whichever it might be called, if it should be thought that in this way a more perfect harmony of government would be secured. Each of these bodies might perhaps be advantageously constituted of two persons, appointed by the Crown, from England, and of one of the civil servants belonging to the existing Council, and of the Governor General himself.

41. The first duty of the Legislative Council would be to constitute subordinate Courts of Justice for the province of Calcutta, and until this should be done the Supreme Court and Country Courts must continue to exercise their respective functions. Our opinions upon this point also, of a system of Courts adapted to India, has been expressed to the Government at their request; and we would only observe here, that for the province of Calcutta we conceive that below the Court of Appeal or Council of Judicature there ought to be one Provincial Court held at Calcutta, about four Zillah Courts, the town of Calcutta and its suburbs constituting of itself one Zillah, and an adequate number of Pergunnah Courts, each permanently established on a fixed spot, which either should be some existing village, or would naturally become the centre of a township. All persons without exception might be by law eligible as Judges and Officers of the Courts; but in practice, one at least of the Judges of any Zillah Court ought at present to be a natural born British subject, and in the Provincial Court all the Judges should be natural born British subjects, and one of them should be an English barrister of some years standing. With the exception perhaps of that one person, and certainly of two of the Judges of a Court of Appeal or Members of a Council of Judicature, who ought to be appointed by the Crown, the other Judges of all the Courts within the province of Calcutta might be appointed by the Governor General in Council. The appropriate functions of each of these Courts it would not be difficult to arrange.

42. The Governor General and Council, as at present constituted, would retain within the province of Calcutta all their present powers, as far as they should be consistent with the new provisions; and it ought to be declared, much more plainly than it has hitherto been, that throughout the other territories they have the exercise, by themselves or through the Company's servants, of all authority, executive, legislative and judicial, subject to the direction and control of the Court of Directors and Board of Commissioners, and to the supreme power of the Crown and the Imperial Parliament. The Governor General in Council, however, should also have the discretionary right of calling in aid the Legislative Council or Court

V. Legislative Councils; Courts of Justice; Code of Laws.

of Appeal, and referring to them any matters arising in any part of the territories, and of appointing, upon emergencies, the members of those bodies or any other persons Commissioners to act in and for any part of the territories.

43. The basis and essential part of this plan is, that the two sorts of law and government which it seems to be necessary to maintain in India, should respectively be confined to separate local limits, instead of clashing together within the same. We consider it a radical defect, that in India the laws are not local, as in most other countries, but personal, and we would make them local. We do not mean that the system to be established around the seat of government should be exclusively British, but one adapted to all the circumstances of the country, though in complete subordination to the Crown and Parliament. The plan, if happily executed, might afford to British persons, and to any other classes of the community who should set a value upon the protection of firm laws and a regular system of Courts, the opportunity of living under them; on the other hand, it would secure the natives in the Outer Provinces from that annoyance which it is affirmed they have occasionally experienced from the process of the English law, and it would preclude all collision between the two sets of Courts and systems of law. In a great measure it would do away with any invidious distinctions in this country between the different classes of inhabitants. In the province of Calcutta, all without distinction would have the most important rights belonging to the inhabitants of a British settlement: in the other territories, all would be equally reduced to such as might be found consistent with the more despotic power, which necessity should require to be maintained there. This need not be at all more despotic than at present it is, as to those who constitute 99-100ths of the whole population: on the contrary, let it be mitigated as much as may be consistent with security; but let British persons who voluntarily place themselves under it be as much subject to it, and in the same manner, as the rest of the people with whom they mingle. Those who now, for the temporary purpose of trade, connect themselves with the cultivation of land in the interior, would continue to do so, whilst for those who should wish to settle for life in India, and to purchase durable and secure interests in land, the province of Calcutta would present a sufficient area for some years to come; and all who are acquainted with the country will acknowledge the general advantage which would result to the British inhabitants from the increase in number of places convenient for their residence even within that limited space. The province would not be so large as to make it an unreasonable expectation, that throughout that district, in which already there is every where a permanent settlement of the revenue, the Courts of Law and a Legislative Council together might be able first to ascertain, and in some degree fix, the nature of those customary interests in land, which are so great a difficulty in the way of making any property in it valuable or secure, and might provide some ready means of settling the disputes which will arise out of this sort of property as long as it subsists; and at the same time some course might be opened by which, with the strictest regard to justice, and without any preference of the English to any other system of law, those inconvenient and barbarous forms of property, such as have at some time or other existed in almost every other country, might, as in other countries, be gradually resolved into more convenient, simple and definite ones, to the advantage of all parties. We wish it to be clearly understood, that it is not English law, but whatever law should be found best adapted to the country, that we should seek to establish, subject to certain specified exceptions and restrictions, preservative of the sovereignty of the Crown and authority of Parliament. The task of preparing, establishing and conducting of a firm system of law within the province of Calcutta, might afford as much occupation to those who now find employment in the Supreme Court, as they would lose by the alteration of its jurisdiction. The interests of religion, and the progress of education, would seem to us to be likely to be promoted by these arrangements, and the Legislative Council and Court of Appeal would constitute channels for the exercise of that control by the Crown and Parliament, within a part of India, over all legislation and administration of justice, which, if they are to remain British, must, in some way or other, be ultimately established throughout the whole territories, even though India should be made as distinct a portion of the British dominions as Ireland was before the Union, and gradually as the system should be perfected within its limited range, it might be extended to other provinces.

44. In

44. In these recommendations we beg leave to disclaim all feelings adverse to the East India Company. Alterations heretofore have taken place in the constitution of the Company, and others no doubt will take place hereafter; but we do not foresee any circumstances in which it would not appear to us to be desirable that the main organ of government for India should be a body of Directors, resident in England, and elected by the holders of stock representing property in India, and depending mainly for its value upon the prosperous condition of that country; and there is scarcely any imaginable case in which the existing Company must not almost necessarily constitute the basis of a government of that description. We regard with consideration and respect the position and interests of those by whom, under the Directors, India is for the most part actually and immediately governed. They and their connections form as it were a large family, which has claims on India, founded in a long expenditure upon it of all that is valuable in life. They only are qualified by information and experience to conduct by far the greater part of its affairs; and one of the principal points in all plans for the government ought to be the preservation of all their real interests, and the securing of their willing and cordial assistance.

45. If our suggestions should be thought deserving of further consideration, we shall be happy to enter into more complete details of what has been stated in this letter, in a very general and imperfect manner, or to communicate any information in our power respecting any other plan which may be thought preferable. We are strongly impressed, however, with the conviction that the trade with India being free, there must necessarily be a greater resort to Bengal of British persons, and a more numerous population imbued by them with British notions than can be confined to Calcutta or its immediate neighbourhood, and that it is in the highest degree desirable to establish an uniform system of laws for all descriptions of persons in such portions of the territories, as will admit of its being easily done and firmly secured. Our opinions differ as to the extent to which this might at present be carried, and by one of us it is considered as a strong recommendation of the plan of confining the immediate change to one province, that, except as to the putting of British persons in the other territories on the same footing as the natives, it is in perfect accordance with the principles and basis of the existing arrangements. The creation of a province of Calcutta would be little more than an enlargement of the boundaries of the town; but by relieving the Supreme Court from the greater part of its original jurisdiction, and making it principally a controlling authority, and by providing on the spot an efficient legislative power, it might be hoped that a much better state of things would be established throughout the province than has ever subsisted within the town.

46. We communicated a short time ago to the Governor General in Council a rough draft of this Letter, together with other papers which had been called for in the course of a correspondence which has been going on for some time. The opinions of the Government are opposed to the plan of establishing, within any one district, a distinct system of law. Perhaps a further consideration and discussion of the subject will remove some misapprehensions on either side, and show that the views of no party are very dissimilar from the rest. At this time the town of Calcutta is under a law at least as different from the rest of the Presidency, as it has ever been intended that a province of Calcutta should be, no more inconvenience is to be apprehended from two different systems of law or government existing on the opposite banks of the Hooghly than that which at present exists, nor than that which is found to be very tolerable on those of the Rhine or the Maise. In practice it may be hoped that in this way there would be much less inconvenience than that which now is occasioned by the different systems being carried about from place to place, as appendant to the persons of the individuals of whom the several classes of the population are composed. If India indeed was an independent country, and a completely new system of law was to be established in it, no reasonable person would think of putting different parts of the country under opposite systems of law. But the reasons of one of the Judges for thinking that this should be done at present in Bengal in the manner above stated, are, first, that it has long been one main feature of the existing system; secondly, that although it seems to have become necessary that British persons should be more freely admitted into the country, the time has not yet come when they may be placed throughout the whole country on the same footing as the natives; and, thirdly, if some portion of the territories be not set apart as a connecting link and rivet with the United Kingdom, there may be some reason to

V. Legislative Councils; Courts of Justice; Code of Laws.

apprehend that the whole legislative and judicial powers of Government would assume a discretionary character, over which it would be impossible to exercise in Europe any efficient control. Instead of laws, there might be merely a set of loose regulations, which, from the vastness and irregularity of their subject-matter could not for many years, by any human efforts, be made universally applicable as fixed laws, so that neither could any subject insist upon the execution of them for his protection, nor could any controlling power in the United Kingdom say when they ought or ought not to be enforced; whereas, if a limited district were set apart, a system might be maintained within it as much subject to the control of the Crown and Parliament as any English colony is, and gradually what should have taken root there, might be spread over larger circles.

We are, &c.

(signed) *Charles Edward Grey.*
Edward Ryan.

(A true copy.)

(signed) *J. Thomason,*
Offg Depy Secy to the Govt.

INDEX.

The Figures refer to the Pages; the Names in *Italic*, at the end of the Paragraphs, between ( ), indicate the Persons whose Opinions are expressed in the Documents.

A.

APPEALS, Courts of. See *Courts of Justice.*

B.

Bombay. Contention between Government and King's Court at, 13, 25, 72——Assumption of jurisdiction by King's Court at, 16, 29, 62——Its power of issuing mandatory writs, *ib.*——Its extraordinary jurisdiction, what, *ib.*——Its charter, *ib.*——Decision of Privy Council as to writ of Habeas Corpus ad Subjiciendum, 128.

British Subjects, and Subjects of Great Britain, who, 45, 66, 69 *et seq.*, 85, 92, 131.

C.

Cases in King's Courts in India:—" Chowdry against Chowdry," 4 *et seq.*——Nawab of Masulipatam, 26——" King against Khoda Buksh and Others," 44, 49 *et seq.*, 61——" Morton against Mehdi Ali Khan," 59, 84, 89——" Syed Ali against Kullea Moollah Khan," 63——Case of an infant ward, 70——Of homicide, 80——Of Claude Martin, 135——Of opposite decisions in King's and Provincial Courts in India, 29.

Code of Laws. See *Laws.*

Colonization of India; Opinions on, and its effects on judicial system of India, 77, 94, 140, 147.

Courts of Justice. See *Justice.*

D.

Dewanny; Legal effects of grant of, to East India Company, 65, 119 *et seq.*

E.

East India Company; Origin of, 118, 163——Obtain grant of territorial revenue, *ib.*——Grounds on which they held their powers, 119, 164——Provisions of British Parliament respecting their acquisitions, 119, 165——Grounded on sovereignty of British Crown and authority of Parliament, 120, 165——Not intended to abrogate previously existing laws of new territory, 120, 166——Judicial power of first East India Company, 122, 167——State of Company's territories antecedent to establishment of King's Courts, 123, 168——Obscurity in which East India Company and Indian territory stand in relation to Crown and Parliament, 129, 175——East India Company the most convenient organ of Government in India, 130, 140, 176——Judicial and legislative powers exercised by them, 130, 132, 176, 179——Consequences of their succession to old governments of India, *ib.*——Their delegated sovereignty, *ib.*——Their exercise of right of taxation, 131, 177——Their commercial concerns no obstacle to reform of judicial system, 147.

East Indians; Their position in respect to jurisdiction of King's Courts in India, 24.

G.

Grant, Sir *John*; Decision of Privy Council on his petition, 127.

I.

India. British territories in, the dominion of Crown of United Kingdom, 106, 119, 129, 130, 147, 160——Right of Parliament to legislate for, unquestionable, *ib.*——Future establishment of an aristocracy in, 77——Natives of, their situation in respect to jurisdiction of King's Courts, 2, 14, 17, 20, 21, 121——Expediency of preserving their peculiar laws and usages, 69——Its effects on other classes of inhabitants, 71——Real interests of Natives in harmony with those of England, 75.

Inhabitants; Legal import of the term in statutes relating to India, 59, 83, 86, 89.

Insolvent Act imperfectly applicable to India, 2.

J.

Juries might be constituted in interior of India, 31, 38, 40, 95, 117, 149, 184.

JUSTICE, Courts of:

Jurisdiction of King's Courts in India involved in doubts, 2——Productive of alarm to native subjects, 2——Their jurisdiction extended beyond the intention of Legislature, 2——Want of consistency of proceeding at several Presidencies, 2——European settlers should be liable to authority of local courts, 2.——(*Governor General in Council.*)

Suit of "Chowdry against Chowdry," involving question of jurisdiction of Supreme Court, Calcutta, touching real property in provinces, 5.——(*E. Macnaghten, Esq.*)

Opinion as to appointment of Receivers, by Supreme Court, to act in the provinces, 10, 11——As to its jurisdiction over real property out of Calcutta, 10.——(*John Pearson, Esq. Advocate-General, Calcutta.*)

Directions to Collectors of Revenue in regard to Receivers appointed by Supreme Court, 11.——(*E. Molony, Esq.*)

Inconveniences of European officers of Supreme Court collecting public revenue in provinces, 12.——(*Board of Revenue, Calcutta.*)

Dissentions between local governments and King's Courts discreditable and dangerous, 13——Supreme power ought to rest with Government, 13, 18——Jurisdiction of King's Courts should be accurately defined, 14, 16, 18, 22——First establishment of Supreme Court in Bengal, 15——Extension of its jurisdiction restrained by law, 15, 21——Seeds of dissention exist in undefined jurisdiction at all Presidencies, 15——Constructive jurisdiction, and its effects, 15, 16——On landed property, 16——Assumption of jurisdiction by King's Courts at Madras and Bombay, 16——Jurisdiction assumed by King's Courts over native convicts, prisoners, and wards, in provinces, 17——Extension of jurisdiction may be oppressive, 17——Courts should not have power of determining their own jurisdiction, 18——Extent of jurisdiction intended by Legislature, 18, 20——Distinction between ordinary and extraordinary jurisdiction, 19——Certain classes of natives alone subject to jurisdiction of King's Courts, 20——Judicial charters, 20 *et seq.*——Origin and operation of universal criminal jurisdiction claimed at Bombay, 22——Schemes for regulating jurisdiction, 22——Amalgamation of King's Courts and Provincial Courts, 24——Qualification of Judges, 24——Mode of administration through Local Courts, 25——Power claimed by Supreme Court at Bombay incompatible with separate jurisdiction of Company's Courts, 25——Mode of regulating exercise of that power, 26, 27——Extension of jurisdiction respecting testaments, 26——Stretch of jurisdiction at Madras, 27.——(*Hon. C. T. Metcalfe.*)

Apprehended inconvenience from interference of King's Courts with landed property in interior exaggerated, 27——Inconvenience of want of complete concurrence of two authorities, 27——Operation of jurisdiction of King's Courts over immoveable property in interior, 27——In respect to public revenue, 28——To tenantry of wards, 28——To lands exempt from revenue, 28——Collectors might be appointed Receivers, 29——Application of law whereby one British-born subject cannot be impleaded by another, in Country Courts, to executorship, 29——Collision between courts with concurrent jurisdiction, 29——King's Courts might be made part of a general scheme of judicial administration, 29——Opposite decisions by King's and Provincial Courts, 29——Jurisdiction assumed by Bombay Court, 29——Defective and inadequate jurisdiction of Provincial Courts, 30——Jurisdiction of King's Courts might be regulated by a system of registry, 30——Provincial Courts might be instrumental to process of King's Courts, 30——Uncertain jurisdiction productive of alarm and oppression to natives, 30——Remedy, 30——Process in suits respecting land should be served through Local Courts, 30——Special Court for questions of concurrent jurisdiction, 30——Cognizance of offences committed by British subjects in interior, 31.——(*Mr. Holt Mackenzie.*)

Extension of jurisdiction of King's Courts to lands in provinces not likely to injure revenue, 32——Remedy for possible evils, *ib.*——Receivers appointed by Supreme Court would be amenable to local law, *ib.*——In adjudicating transfers of property in provinces, King's Courts do not alter laws to which the property is subject, 33——Doubt as

JUSTICE, Courts of—continued.

as to law respecting suits between British-born subjects in Country Courts, 33——Injurious effects of limiting too severely jurisdiction of King's Courts, 33——Power of Sudder Dewanny Adawlut to punish contempt and perjury, 34, 41——System of registry difficult, 34——Employment of Local Courts in aid of process of King's Courts objectionable, *ib.*——(*Mr. W. H. Macnaghten.*)

Appointment of Receivers by King's Courts essential to its jurisdiction, and not productive of inconvenience, 34, 35——Objections answered, 35–37——Jurisdiction of King's Courts over lands in interior conceded, 35——Want of reciprocity in process of King's and Provincial Courts, 36——A system of registry inefficient, 37——Precautions against abuse of process of King's Courts, 37——Natives in provinces not subject to jurisdiction of King's Court by reason of land held in Calcutta, 37——Process of King's Courts not suitable to country, 37——Employment of Provincial Courts in aid of process of King's Courts, 37——So employed at Madras, *ib.*——Jurisdiction of Sudder Dewanny Adawlut in perjury, 38——Legislative provision necessary for trial of British subjects in interior, 38——General sessions with juries of native Christians, 38. ——(*Mr. J. W. Hogg.*)

Jurisdiction of Supreme Court over property out of Calcutta, 38——Receivers should be amenable to local law, 39——Controlling power of Supreme Court over provincial judicial authorities, 39——Suits between British-born subjects in provinces, 39——King's Courts might have concurrent appellate jurisdiction with Provincial Courts, 39 ——Process of King's Courts should be executed in provinces by local authorities, 40 ——Objection to special Court for questions of concurrent jurisdiction, 40——Objection to Sessions in provinces, 40.——(*Mr. A. Ross.*)

Sudder Court no power of punishing European British subjects for contempt, 42 ——(*John Palmer*, Esq. Advocate-General.*)

* *Qu.* Pearson.

Opinions of *Mr. Minchin*, *Mr. Serjeant Bosanquet*, and *Sir N. Tindal*, on statute 53 Geo. 3, c. 155, affirming power of Provincial Courts to take cognizance of civil suits, in which both parties are Europeans, 42 *et seq.*

Supreme Court's jurisdiction of Oyer and Terminer, in criminal offences committed by natives beyond limits of Calcutta, 44——Legal import of term "British subjects," 45——Natives not liable to jurisdiction, 46——Difficulty of defining criminal jurisdiction of Supreme Court, 46——Rule of construction of statutes, 47——Painful difficulties attending undefined jurisdiction, 48——Case of "Khoda Buksh and others," 48 *et seq.* ——(*Judges of Supreme Court, Calcutta.*)

Recorder's Court of Singapore, Malacca, and Prince of Wales's Island, 52——Consequences of a professional Judge in that Court, 52——Power of the Court adverse to raising revenue, 52.——(*Mr. R. Fullerton.*)

Judicial districts or circuits might be established at each Presidency, 57——Vindication of constitution and proceedings of Supreme Court, 59——Its asserted assumption of jurisdiction, 59, 61——Case of "Morton against Mehdi Ali Khan," 59——Its jurisdiction over natives trading at Calcutta, 59——Over property of British subjects in interior, 60——Over natives beyond boundary of Calcutta, 61——Appointment of Receivers belongs to Supreme Court as a Court of Equity, 61——And is essential to execution of its functions, 62——Vindication of Courts of Madras and Bombay, *ib.*—— Grant of probates and administrations to natives, 62——Case of "Syed Ali against Kullea Moollah Khan," 63——Compulsory process of Court in territory of allied States, 63——Whole jurisdiction of Court, 64——Over natives, *ib.*——Over other subjects of Crown, 64——Obstacles of Court on its first establishment, *ib.*——Original intention of East India Company to bring all native courts in subordination to Supreme Court, 64——Subsequent tendency to opposition, *ib.*——Want of co-operation on part of the Government, 64——Judges of Court not to be assumed to have overstepped jurisdiction, 64——Acknowledgment by Parliament of independence of Provincial Courts, 69——And of Governor-General in Council as a Court of Appeal, *ib.*——Consequences of boundaries of jurisdiction not being accurately defined, 69, 70——Doubts as to terms "subjects" and "British subjects," 70——Illustration of doubtful jurisdiction of all Courts in India, 72——Supreme Court no subordinate, except Court of Requests, 73——Alterations in its powers have been restrictions, *ib.*——Construction of alterations doubtful, 73——Imputation of encroachment unjust, *ib.*——Defects will be in future more embarrassing, 73——Collisions of authority, *ib.*——Remedies, 74——Objections to Government controlling King's Courts, 74——Want of connection between King's and Provincial Courts, 75——Effects, 76——East India Company, if only a political organ, might have entire ordinary administration of justice, subject to a King's Court of Appeal, 76——Provincial Courts and Courts of Circuit to have jurisdiction over all persons, 76——Qualification of Judges, *ib.*——New Courts, with increased powers, would be required, on free admission of British subjects into interior, 77.—— (*Sir C. E. Grey.*)

Proposed supremacy of Government over King's Courts, 82——Jurisdiction of King's Courts, 82——Cause of doubt as to jurisdiction, *ib.*——Case of "Morton against Mehdi Ali Khan," 84——Attachment of property in interior by process of Supreme Court, *ib.* ——Court's jurisdiction in criminal cases beyond bounds of Calcutta, 85——Clear defi-

JUSTICE, Courts of—continued.

nition of extent of jurisdiction required, 85——Court not anxious to extend it, 86——Arrests in territories of Native Princes, 86——Objection to appointment of local officers as receivers, 87——Registration of decrees in provinces, *ib.*——Subjects, partly European and partly Asiatic, should be, as to principal jurisdiction, on footing of British subjects, 87——British subjects should be amenable to Local Courts as to contracts out of jurisdiction of King's Courts, 87——Advantages of Supreme Court being a Court of Appeal, 87——Rules of respective Courts, *ib.*——(*Sir J. Franks.*)

Evils of imperfectly-defined jurisdiction of King's Courts in India, 88——Appointment of Receivers in provinces not productive of great practical evil, 88——Legal jurisdiction of Supreme Court, 89——Extends to immoveable property in provinces, *ib.*——And to constructive inhabitants of Calcutta, 90——Natives taking probates or administrations should not be subject to jurisdiction, 91——Control of Government over Supreme Court objectionable, 92——Contrary to intentions of Legislature, *ib.*——Effects of doubtful jurisdiction of Court, 93, 94——Europeans settling in India should be amenable to Local Courts with less limited powers, 94——Effects of colonization on judicial system, 95——Reconstruction of Courts, 95——Assimilation of Courts and forms of proceeding throughout India, 96——Introduction of English language, *ib.*——Selection of Judges, *ib.*——Appeals, 96.——(*Sir E. Ryan.*)

King's Courts necessary as long as East India Company continue to trade, 105——Operation of general admission of European settlers on arrangements for Courts of Justice, 105——King's Courts of Appeal desirable, 106——Majority of Judges should be appointed by Crown, 106——New arrangements should be gradual, *ib.*——Court of last resort should be a King's Court, 106——A sufficient number of good Courts might remedy difficulties arising from law of landed property, 113——Arrears in Provincial Courts and Native Judges obstacles to introduction of British landholders into India, 113——Establishment of Courts in provinces, 114——New division of territory, with a Court in each division, 114, 115——Jurisdiction and constitution of these Courts, 115——A Supreme Court of Appeal, with original jurisdiction, in each Presidency, 115——Regulation of Appeals, 116——Every Court to have power of issuing writ of *Habeas Corpus*, 116——Visitation of Judges, *ib.*——Mode of appointing Judges, *ib.*——Rules as to districts in which causes are to be tried, 116——Persons amenable to the Courts, 116——Execution of process, 116——Juries, 117——Cases for Court of Equity, 117——Jurisdiction as to testaments, 117.——(*Judges of Supreme Court, Calcutta.*)

Object of statute 13 Geo. 3, c. 63, to afford means of bringing territorial acquisitions into subordination to Fort William, and under control of a Supreme Court, 120, 166——Powers and jurisdictions given to Supreme Court by the statute, 122, 167——Regarding conservation of peace, 123, 169——To hear and determine pleas, 125, 170——As a Court of Oyer and Terminer, 125, 171——Constructive extent of jurisdiction under the statute, 125, 171——Productive of contests, 126, 171——Impression that Judges exceeded their authority erroneous, 125, 171——Limitations by statute 21 Geo. 3, c. 70, *ib.*——Whole system of Provincial Criminal Courts not established by a power created by Crown or Parliament, 127, 172——Present extent of jurisdiction of Supreme Court, 127, 172——Writ of *Habeas Corpus ad Subjiciendum*, 127, 173——Difficulties arising from decision of Privy Council, 128, 173——Predicament of certain out-lying Factories, with reference to existing jurisdiction of Supreme Court, 128, 174——Impediments to Court, 129, 175——In respect to its process against lands in interior, 129, 175——Obscurity as to relation of Indian territories and East India Company to Crown and Parliament, 129, 175——Complicated state of law, 129, 175——Embarrassments arising from doubts as to sovereignty of India, 130, 176——From doubtful application of statutes, *ib.*——From uncertain sense of term "British subjects," 131, 177——From improvident addition to jurisdiction, 132, 178——No plan for gradual assimilation of British and Native systems, *ib.*——Effects of the separation, 133, 179——Experiment of one harmonious system in a district, 133, 179——Difficulties arising from imperfections of Acts of Parliament and Letters Patent, 133, 179——Defects of statute 21 Geo. 3, c. 70, *ib.*——Variations between charters of different King's Courts, 133, 179——Difficulties inherent in Court's original constitution, 134, 180——Imperfections of Hindu law, *ib.*——Hindu and Mahomedan law of property, 135, 181——Difficulty of administering that law by forms of Supreme Court, *ib.*——Regulation of funds for superstitious uses, 135, 181——Case of Claude Martin, *ib.*——Supreme Court not chargeable with delay or expense of suits, 136, 182——Remedies, *ib.*——Declaratory law as to sovereignty, and legal character and rights of inhabitants of India, 136, 182——Experimental districts to be called "Province of Calcutta," 137, 183——Difference of opinion of Judges on this point, 183——Proposed definition of jurisdiction of Supreme Court, 138, 184——Governor-General to preside in Court of Appeal, 138, 185——Proposed subordination of Provincial Courts, *ib.*——Separation of judicial and executive functions basis of plan, 139, 186——Effects on British settlers and natives, 139, 186.——(*Judges of Supreme Court, Calcutta.*)

Objections to introduction of new judiciary system in district, 144——Gradual reformation practicable, 146——Effects of settlement of Europeans in interior, 147——Statement of business in several Provincial Courts, 148——Employment of Native Judges, 148——Should be in subordination to European Judges, 149——Tribunal between Zillah Courts and Court of final jurisdiction objectionable, 149——Restriction of appeals desirable,

JUSTICE, Courts of—continued.

desirable, 149——Jurisdiction of Court at Calcutta, *ib.*——Circuits practicable, *ib.*——(*Governor General in Council.*)

Practicability and advantage of experimental reform in province of Calcutta, 161.——(*Judges of Supreme Court, Calcutta.*)

Justice, Courts of, in provinces, established by Mahomedan government, not intended to be abrogated by statute 13 Geo. 3, c. 63; 120, 121, 166——Effects of the statute, 121, 166——Power of moulding Nizamut Adawlut into a more British form, *ib.*——Existence of Provincial Courts noticed in statute 21 Geo. 3, c. 70, but no court mentioned, 127, 172——Whole system of Provincial Courts not established by a power created by Crown or Parliament, *ib.*

K.

Khoda Buksh, Case of, 44, 49 *et seq.*, 61, 91.

L.

LAWS, Code of:

Defective state of law relating to jurisdiction, 1——Present and future effects, 2——Obstacles to remedy by Parliamentary enactments, 2——Criminal law administered by Provincial Courts, 3.——(*Governor General in Council.*)

Anomalies arising from various laws, regulations and institutions in India, 11.——(*John Pearson, Esq. Advocate General, Calcutta.*)

Our Indian subjects amenable to two codes, 14, 26——Effects, 15 *et seq.*——(*Hon. C. T. Metcalfe.*)

Statutes relating to India loosely framed, 38.——(*Mr. J. W. Hogg.*)

Difficulties arising from vague and unsettled state of law, 48.——(*Judges of Supreme Court, Calcutta.*)

New and extensive system of laws grown up in provinces since 1781, 54——Great variety of subjects comprised in Government regulations, 55——Disorder of existing system of local law remediable by dividing each Presidency into districts, 57——Variety of laws prevailing in British India, 57——Future aggravation of evil, *ib.*——Periodical digest of laws proposed, 58——A code practicable, applicable to all persons, 77.——(*Sir C. E. Grey.*)

Not intention of Legislature that natives of India should be subject to two codes, 84——Such double effect exists, *ib.*——(*Sir J. Franks.*)

Difficulties arising from two systems of law in force within same dominion, 94——Consolidation of English, Hindu, and Mahomedan law into one code, 95.——(*Sir E. Ryan.*)

Formation of a general code for British India, 101.——(*Lord William Bentinck.*)

Confused state of law in India as to rights of persons, 111——Remedy difficult, 112——Should be gradual, 112——Law of property, *ib.*——As to moveables, might be made uniform, by adopting the law of England, 112——As to immoveable property, more difficult, 112——Customary interests of immediate cultivators various and uncertain, 112——And the real obstacle to admission of British landholders, 112——Interests might be adjusted gradually and in districts, 113——Proposed law of landed property, *ib.*——Rule of primogeniture, 113——Law of private injury not difficult of arrangement, 114——Law of public wrongs easily settled, 114——A penal code might be made in a few months, 114——(*Judges of Supreme Court, Calcutta.*)

Complicated state of law in India, 129, 173——No plan for gradual assimilation of British and Native systems, 132, 178——Practicable if whole legislative and judicial powers had been under one controul, *ib.*——Experiment of one system might be made in a district, 133, 179——A system of criminal law might be now established in greater part of India, 138, 184.——(*Judges of Supreme Court, Calcutta.*)

Confusion in existing laws remediable only by a local legislation, 143——Innovation in law of property unnecessary, *ib.*——Native law of inheritance of moveable property simple, 143——English law of property might be adapted to Christian persons, 144——New rules required as to testamentary law, 144——English criminal law might be adapted to India, 144——Objections to introduction of a new code in a district only, *ib.*——As to natives; British subjects; commercial relations, 146——System improvable without arbitrary separation of empire, 146——Sudden changes mischievous, 147——Effects of European settlement in interior, 147——Would facilitate ends of justice, *ib.*——Law of landed property, 147——One code of law should be established for all persons and all places, 147——(*Governor General in Council.*)

Change of law of property should be slow and cautious, 160——Impossible to provide immediately fixed laws for whole of India, 160——Practicability and advantages of experimental reform in province of Calcutta, 161——(*Judges of Supreme Court, Calcutta.*)

Legislative Councils:

Legislative power vested in Indian governments falls short of exigency, 2——A local legislative authority a matter of most urgent expediency, 2——How to be constituted, 3——King's Judges should form part, 3——(*Governor General in Council.*)

Power of legislation entrusted to local government, 31——Constitution of Legislative Council, 31——King's Judges should take part in it, 31——Necessity of some local legislative authority, 31——(*Mr. Holt Mackenzie.*)

A general power of legislation should be vested in some local Council, 38.——(*Mr. J. W. Hogg.*)

General power of legislation should not be given to Indian Government without local check, 41——Legislative Council, on right principles, very desirable, 41——Its constitution, 41——Chief Judge of Supreme Court should be a member, 41.——(*Mr. A. Ross.*)

Three distinct powers of legislation now vested in local governments of India, 54——Not well defined, 54——Their exercise more extensive than foreseen by Parliament, 54——Large powers of legislation must be exercised in India, 54, 56——The limits, *ib.*——Regulations should be based in a Council, at which King's Judges, or persons appointed by Crown, should assist, with power of prevention, 55——Extent of legislative power of Council, 56, 76——To all persons and all places, 56——Not to be elective, 57——Not to include any Indian persons, 57——Constitution of Council, 58——Its acts should be liable to review, controul and repeal, 58——And should be periodically formed into one body of laws, 58——Power of legislation in India should be secured much more firmly to Crown and Parliament, 74, 76.——(*Sir C. E. Grey.*)

Legislative powers of Governor General in Council, 79——Advantages of a Legislative Council for discussion of regulations prior to promulgation, 80——Its constitution, 81——Should include King's Judges, 81——Limitation of its powers, 81——Objection to union of legislative and judicial functions answered, 81——(*Sir J. Franks.*)

Defects of existing system, 96——Parliament cannot legislate for immediate exigencies in India, 96——Legislative powers of East India Company's Government, 97——Short of what exigency demands, 97——Authority in India competent to legislate for all classes and places, expedient, 98——Constitution of Legislative Council, 97——Judges of Supreme Court should form part, though not free from many and weighty objections, 99——Limitations of power of Council, 97——Governor General should have a *veto*, 100——And Judges; or a power of suspending, 100.——(*Sir E. Ryan.*)

Hopelessness of Parliament legislating for immediate exigencies of India, 100——Necessity of maintaining subordination of local legislature to Parliament, 100——Measures for practical enforcement of this principle, 100——Constitution of Legislative Council, 101——Should consist of Members of Council and Judges of King's Courts only, 101——A *veto* should belong to Governor General, and a suspending power to Judges, 101——Limitation of power of Council should be precise, 101——Promulgation of laws, 101——(*Lord W. Bentinck.*)

Necessity of a local legislature, 102——Its constitution, *ib.*——Its limitations, 103——*Veto* to be reserved to Governor General, and suspending power to Judges, *ib.*——(*Governor General in Council.*)

Legislative Council, 104——Its constitution, *ib.*——(*Governor General in Council.*)

Necessity of a local legislature, 106——Members should be appointed by the Crown, 106——Council should be gradually brought into operation, 106——Heads of a Bill for establishing Legislative Councils in the East Indies, 107, 141, 153.——(*Judges of Supreme Court, Calcutta.*)

A Legislative Council suggested for province of Calcutta, 137, 183——Difference of opinion of Judges on this point, 183——Might be employed for other territories hereafter, 138, 185——Its functions, 138, 185.——(*Judges of Supreme Court, Calcutta.*)

Local legislature the only remedy for confusion in existing laws, 143——And for judicial reforms generally, 149.——(*Governor General in Council.*)

Amendments in clauses of Bill for Legislative Councils, 150–152.——(*Judges of Supreme Court, Calcutta*; and *Governor General in Council.*)

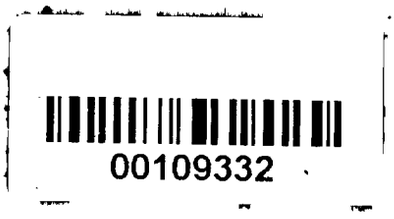
Nothing in principles applicable to conquests by Crown adverse to constitution of local legislatures, 160——Imperial Parliament not the place for details of Indian legislation, 160——Local legislatures should be the ministers of Parliament, 160——(*Judges of Supreme Court, Calcutta.*)

M.

Madras; Assumption of jurisdiction by Supreme Court at, 16, 62.

Martin, Claude, Case of, 135.

Morton against *Mehdy Ali Khan*, Case of, 59, 84, 89.



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